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THE PENSION COMMISSION OF ONTARIO

BULLETIN

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Staying Informed: A Member's Right to Information

There are several categories of information that must be disclosed to pension plan members:

- I *Information Members Must Receive from the Administrator*
- II *Information Members May Request from the Administrator*
- III *Information Members May Receive from the Administrator in Certain Circumstances*

I Information Members Must Receive from the Administrator

Under Ontario's Pension Benefits Act (the "PBA"), administrators are required to provide certain information to plan members about their pension benefits and entitlements from the pension plan.

In addition to those sections of the Regulation identified in this material, please refer to sections 25 to 30 inclusive of the PBA.

Member Booklets

A member or eligible member of a plan is entitled to receive an employee or member booklet from the administrator. The booklet must explain the provisions of the pension plan and the rights and obligations of plan members.

The booklet must be provided to the members within 60 days after the effective date of the establishment of the plan. If a pension plan has a membership eligibility period, the administrator must provide the prospective member with the booklet 60 days before the individual is eligible to become a member. If, however, new employees become pension plan members the day they commence employment, the administrator must provide the booklet for new employees within 60 days of their respective dates of hiring.

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Annual Statements

The annual statement must contain the information required by the PBA. The statement may also summarize specific plan details that are in addition to the requirements of the PBA.

The statement advises the member each year of the value of the pension benefit that has accrued in a defined benefit plan or, in the case of a defined contribution plan, the total contributions (plus earned interest) made on the member's behalf. Members must receive the annual statement within 6 months following the year end of the plan.

Section 40 of the Regulation describes the information that must be included in all annual statements regardless of whether the plan is a defined benefit or a defined contribution type:

- the legal name of the pension plan and its provincial registration number;
- the member's name and birth date;
- the statement reporting period;
- the date membership in the plan commenced;
- the period of employment (unless membership is in a MEPP);
- the date or dates benefits or contributions are vested;
- the normal retirement date under the plan;
- the earliest date an actuarially unreduced pension would be payable;
- marital status and name of the spouse;
- identity of the member's beneficiary for statutory pre-retirement death benefits;
- benefits, other than those benefits required to be paid under the PBA, provided to the beneficiary on the member's death;
- required member contributions during the reporting period;
- the total required member contributions plus earned interest since joining the plan;
- any additional voluntary contributions made by the member during the reporting period;
- the total additional voluntary contributions, plus earned interest, made by the member since joining the plan; and
- any amendments to the plan affecting the member, where the member was not previously informed.

The annual statement must contain the following additional information for members of defined contribution plans:

- the amount of employer contributions made to the plan on the member's behalf during the reporting period; and
- the amount of employer contributions, plus earned interest, made to the plan on the member's behalf since membership commenced.

The annual statement must contain the following additional information to members of defined benefit plans:

- the number of years of employment (for pension purposes to the end of the statement period);
- the amount of annual pension payable at the normal retirement date determined to the end of the reporting period;
- whether there will be any reduction based on a Canada Pension Plan/Old Age Security offset;
- if applicable, the member's salary level used to determine the pension benefit;
- if applicable, any special payments being paid by the sponsor to liquidate a going concern unfunded liability or solvency deficiency; and
- details respecting surplus and entitlement to surplus in the continuing plan and on wind up.

The annual statement must contain further information for members of multi-employer pension plans providing defined benefits (where the maximum amount of employer contributions is limited by a collective agreement):

- a statement that member benefits are not covered by the Pension Benefits Guarantee Fund; and
- a statement that if the plan is in a deficit position at wind up, pension benefits may be reduced.

Termination Statements

When a member terminates employment, retires or dies while employed, a personalized termination statement must be issued by the administrator no later than 30 days after the administrator is advised of the termination. Depending on the circumstances related to termination, the individual statement must include specified information.

A 1) The Member Terminates For Reasons Other Than Retirement (Section 41 of Regulation 909)

At termination of employment, if the member has vested in accordance with the plan provisions or has satisfied the age and service requirements for vesting under pension legislation, the member is entitled to a deferred pension and may be entitled to an immediate pension.

The member must receive from the administrator a written termination statement within 30 days of notice of termination being given. The termination statement summarizes much of the same information found in the annual statement including, if applicable, the name of the member's spouse.

In addition, the following information must be provided:

- all benefits to which the member is entitled on termination and the early, normal or postponed retirement options applicable to those benefits;
- the amount of any bridging benefit the member is entitled to and the date on which the benefit ceases to be paid;
- any plan provisions which provide for inflation protection;
- the transfer value of the deferred pension and ancillary benefits;
- where the plan is not fully funded, that portion of the transfer value that may be transferred initially;
- portability options under section 42 of the PBA*;
- the time period for selecting portability options; and
- the amount of any cash refund and the effect of the refund, if any, on the member's pension or deferred pension.

*for terminated members who are entitled to an immediate pension, portability options will be consistent with the terms of the pension plan.

2) The Member is Entitled to a Contribution Refund on Termination (Subsection 42(2), (3) and (4) of the PBA)

If a member terminates employment for reasons other than retirement or death and prior to becoming eligible for a vested benefit, the administrator must provide a termination statement indicating the amount of contribution refund available. The statement will also describe any refund options which the member might choose, i.e. cash refund or transfer to a regular RRSP.

The termination statement indicating the amount of contribution refund must be provided to the former member within 30 days following notification of the termination. Where no options are available with respect to the refund, monies must be made available within 60 days after termination of employment. If the former member selects an option with respect to the refund, the administrator must comply with the election within 60 days after receipt of a direction from the member.

The refund termination statement described in section 42 of Regulation 909 includes:

- the legal name of the pension plan and its provincial registration number;
- the member's name and birth date;
- the years of employment used to determine the pension benefit;
- the amount of any refund;
- any ancillary benefit to which the member may be entitled; and
- any transfer option to which the member is entitled, and the time period in which the option must be chosen.

B The Member Dies Before Retirement

If the member or former member dies before payment of a pension commences, the administrator must issue a statement called a Death/Survivor Benefit Statement to the spouse, beneficiary or legal representative within 30 days after notification of death.

The death/survivor statement described in section 43 of Regulation 909 includes:

- the legal name of the pension plan and its provincial registration number;
- the amount and method of payment of the benefit;

- the basis for indexation of the pension, if applicable;
- in a defined benefit plan - the statement may show a refund amount, if applicable, payable to the member for contributions plus interest made after January 1, 1987 that exceed one-half of the commuted value of the pension;
- where it is a condition of the plan, the amount of pension resulting from additional voluntary contributions;
- where the death benefit is payable to a spouse, a choice of a lump sum payment or an immediate pension (both would be equal to the commuted value of the deferred pension); and
- the time period within which options may be exercised*.

*A spouse or beneficiary has up to 90 days to make an election. Upon receipt of the election form, the administrator must respond within 60 days.

C The Member Retires

At least 60 days prior to a member's normal retirement date or the date on which the member elects to retire, the administrator must issue a Retirement Termination Statement. If the member does not give adequate notice of retirement, the administrator may issue the Retirement Termination Statement within 30 days after the date on which the member has given notice.

The retirement termination statement described in section 44 of Regulation 909 includes:

- the legal name of the pension plan and its provincial registration number;
- the member's name and birth date;
- the membership date and the years of service used to calculate the pension;
- marital status and the identity of the spouse;
- the date of payment of pension benefits;
- the amount of the monthly pension;
- any reduction or increase in the pension as a result of early or postponed retirement;
- the amount of pension purchased with additional voluntary contributions;
- the amount of pension purchased with contributions transferred from another plan;
- the effect of any integration with government pensions;
- any bridging benefits and the date they will cease;
- any indexation provisions;
- any benefit payable in the event of the member's death and the identity of the beneficiary; and
- any other refunds to which the member may be entitled.

II Information Members May Request from the Administrator

Members of pension plans are entitled to inspect or copy once annually all documents that support and relate to the plan and its operation. All documents that set out the sponsor's responsibilities and the member rights and obligations are to be made available to members at the location where the member is employed. The member should make a written request to the administrator to review or obtain a copy of the documents. The administrator is entitled to charge a reasonable amount for any copies that are provided. Efforts should be made by the administrator and member to accommodate each other reasonably if, for example, the two are at different locations. If the administrator does not respond to the member's written request within 30 days following receipt of the request, the member should follow-up with the PCO.

Documents that members may review or copy are described in section 45 of Regulation 909 include:

- pension plan documents/texts and all amendments;
- previous versions of plan documents/texts and amendments;
- documents that set out the employer's or previous employer's responsibilities for the pension plan;
- documents appointing a plan or fund administrator;
- copies of all documents required to be filed with the PCO:
e.g. Annual Information Returns (AIRs), unaudited or audited financial statements, investment policy returns, Statements of Investment Policies and Goals, actuarial valuations, cost certificates;
- copies of all correspondence between the administrator and PCO staff except for correspondence respecting individual plan members; and
- copies of agreements respecting the purchase or sale of a business or other assets of a business that relate to the pension plan.

III Information Members May Receive from an Administrator in Certain Circumstances

Notices from the Administrator

A Notice of Adverse Plan Amendment (Section 26 of the PBA)

From time to time, the employer/plan sponsor may make amendments to the pension plan. If these amendments result in a reduction of the member's future benefits or affect the rights or obligations of members, including former members or other people who are entitled to money from the pension fund, the administrator is required to give a written notice with an explanation of any such amendment to all those potentially affected by it. The notice will invite recipients to submit comments concerning the effect of the proposed amendment to the administrator and the Superintendent of Pensions within 45 days of receipt of the notice. The Superintendent of Pensions will not register the amendment until after the 45 days has expired.

B Notice of Registration of Amendment (Section 39 of Regulation 909)

After an adverse plan amendment has been registered by the PCO, the administrator must give written notice of registration to all plan beneficiaries affected by the amendment. The notice must be issued within 60 days of registration.

C Notice of Full and Partial Plan Wind Up (Subsection 28(1) of Regulation 909)

The administrator must give written notice of the employer's intention to wind up the plan, in full or in part, to the Superintendent of Pensions, all members, former members, each trade union, the advisory committee, if applicable, and anyone else entitled to payment from the pension fund. The proposed date of full or partial wind up must be identified in the notice.

If only a portion of the plan is winding up, it is called a partial plan wind up and only those members and individuals affected by it must receive a notice from the administrator.

According to the Regulation, the wind-up notice must include:

- name of the plan and the plan provincial registration number;
- proposed date of wind up;
- notification that all members and all others entitled to a benefit or payment from the fund will receive individual statements setting out plan entitlements and options; and
- notification that members may continue to make contributions to a contributory plan for the period of notice of termination of employment.

D Notice of Entitlements

Each member who is entitled to a pension, deferred pension, or a refund will receive an individual statement setting out plan entitlements and options. This notice must specify the time period available to the former member to select an option, being not less than 90 days. If the former member does not select an option within that time period, the administrator may choose to provide either an immediate or deferred pension. The administrator must comply with the former member's selection within 30 days after receipt of the completed option form or, on receipt of notice that the wind-up report has been approved by the Superintendent, whichever is the later.

According to subsections 28(2), (3) and (4) of Regulation 909, the notice of entitlements on plan wind up includes:

- the legal name of the plan and its provincial registration number;
- the member's name and birth date;
- the date of plan wind up;
- the date the member began employment, and the date the member joined the plan;
- the name of the member's spouse;
- the total amount of contributions made by the member since the date of the last annual statement;
- the total amount of contributions made by the member for the period of plan membership, plus earned interest, to the date of plan wind up;
- the amount of additional voluntary contributions made by the member since the date of the last annual statement;
- the total amount of additional voluntary contributions made by the member for the period of plan membership, plus earned interest, to the date of plan wind up;

- any amount transferred from another pension plan since the date of the last annual statement, and the pension benefit attributable to that amount;
- the rate of interest credited to the member's contributions since the date of the last annual statement;
- an explanation of any amendments made to the plan which have not already been explained by a notice of amendment;
- the time period in which any transfer option must be selected;
- a description of any reductions made to the member's benefits as a result of the plan having insufficient assets to pay all benefits;
- the method of distribution and, if applicable, the formula for allocation of surplus to plan beneficiaries;
- notification of where the wind-up report can be reviewed and how a copy may be obtained; and
- the name of the individual who may be contacted should the former member have questions about their notice of entitlement.

In the case of a defined contribution plan, the notice of entitlements also includes:

- the total amount of employer contributions made to the plan since the date of the last annual statement; and
- the total amount of employer contributions made to the plan, plus earned interest, to the date of plan wind up.

In the case of a defined benefit plan, the notice of entitlements also includes:

- the member's years of employment used to calculate benefits, including any periods credited because of enhanced wind-up benefits; and
- the salary level used to determine benefits, if salary is a determining factor.

E Notice of Surplus Withdrawal Application in Ongoing Plans and in a Wind up

If the employer is considering a withdrawal of surplus from either a plan that is continuing or a plan that is winding up, all members potentially affected by the withdrawal must receive notice that the application has been filed with the PCO. It may be appropriate for the member or group of members to seek legal advice as to surplus entitlement. (Note that after notice of the employer's intentions to wind up the plan has been given, no money may be paid out of the pension fund without the prior consent of the Superintendent.)

The notice may include a section asking members to agree, in writing, to allow the plan sponsor to withdraw surplus from the plan. The notice must contain a statement that members may write to the PCO to express their views on the application.

In an application for surplus withdrawal from an on-going plan, the employer/plan sponsor must obtain the consent of all members to the terms upon which surplus is to be paid out of the plan. If surplus is allocated to a person to increase benefits, the individual must be offered the choice of receiving the surplus in the form of inflation adjustments to the existing benefits (Section 10 of Regulation 909).

In a wind-up situation, the plan sponsor must obtain the consent of two-thirds of the members to the terms for surplus allocation.

According to subsection 28(5) of Regulation 909, the notice of surplus withdrawal from ongoing or wound up plans includes:

- the legal name of the plan and its provincial registration number;
- review date of the actuarial report;
- amount of surplus attributable to employer and employee contributions;
- amount of surplus withdrawal requested;
- a statement that members' comments may be made to the PCO within 30 days of receipt of the notice;
- applicable provisions of the plan text that references surplus reversion to the employer; and
- a statement that the wind-up report may be viewed or copied at the sponsor's office.

F Notice to A Spouse (or Former Spouse) on Marriage Breakdown (Section 46 of Regulation 909)

An administrator who is given a copy of a domestic contract or court order must provide notice to the spouse of the member's termination of employment. The administrator must also provide a copy of the member's termination statement and must advise the spouse of options, if any, available for transferring his/her share of the member's pension.

The notification must be made within 30 days after the administrator receives notice of the member's termination.

Pension Plans are Not Flexible Benefit Plans

Many employers have found that the cost of providing health, dental, insurance and pension coverage to their employees has continued to rise despite the recession. Accordingly, employers are making efforts to contain costs by eliminating benefit coverage that does not meet the particular needs of individual employees.

Some employers have considered amending pension plans to permit employer contributions to be redirected to the funding of other benefit programs. For example: a pension plan, which provides for a basic pension benefit, might permit members to have the option of contributing to the plan fund in any amount that falls within a specified range or percentage of compensation. The employer would make an additional contribution with respect to the member contribution.

The employer's cost savings would be achieved by permitting each member, who chooses the option to contribute to the pension plan, the opportunity to elect to redirect the additional required employer contributions to provide coverage under any of the other benefit programs funded by the employer.

In such a case, an amendment to permit employer funding to be redirected to benefit programs outside of the pension plan would not be acceptable for registration under the PBA.

Reason

A pension plan is either contributory or non-contributory. In either case, the contributions (employee and/or employer) required to fund the benefits accruing in accordance with the terms of the plan must be remitted to the plan fund. Where a non-contributory plan also contains a provision which permits the members the option of contributing to the pension plan, those contributions will be additional voluntary contributions (AVCs) unless the terms of the plan also require an additional concurrent employer contribution to the pension plan with respect to the additional member contribution.

A pension plan or an amendment to a pension plan which permits the redirection of required additional employer contributions to fund a benefit package other than the pension plan is not acceptable for registration under the PBA.

Similarly, a contributory pension plan which also permits members the option of contributing additional amounts to the pension plan must clearly indicate whether those contributions are AVCs or whether a concurrent additional employer contribution is required to be made to the plan fund.

Regulations

On July 27, 1993 the Minister of Finance announced in a news release that the Government has repealed exemptions to the Pension Benefits Act which were granted to two National Hockey League pension plans in 1989.

Re: National Hockey League Pension Plan and Trust – Section 47(11) of Regulation 909

*Regulation to amend
Ontario Regulation 909/90 made
under the Pension Benefits Act*

On July 23, 1993 O. Reg. 433/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette on August 7, 1993.

1. Subsection 47(11) of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked.

Note: Regulation 909 has not been amended in 1993. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1993

Announcements

Distribution of Surplus to Plan Beneficiaries on Wind Up

This item appears as a matter of record only. It has not been reported previously in the PCO Bulletin.

On December 17, 1992 the Pension Commission amended its policy which required that surplus distributed to plan members on wind up be in the form of benefit enhancements. In future, the Commission will permit the distribution of surplus to plan members on wind up in the form of cash, benefit enhancements or some combination of the two.

Proposed Multilateral Agreement Among Pension Jurisdictions Released for Discussion

A proposed new multilateral agreement was recently released for discussion by the Canadian Association of Pension Supervisory Authorities (CAPSA).

The agreement would continue to permit pension plans with members in more than one jurisdiction, to register only in the jurisdiction in which the plurality of active members are employed. However, the proposed new agreement would go much further than the existing agreement in streamlining the regulatory process. Under the proposed agreement, the pension legislation of the jurisdiction in which the plan is

registered would be applied to all plan members, regardless of the jurisdiction of their employment.

It is expected that, if implemented, such an agreement would alleviate the heavy administrative burden faced by multi-jurisdictional plan sponsors.

It should be noted that CAPSA is not a decision making body and its proposals are not binding on the jurisdictions represented. To take effect, the agreement must be approved by the governments of the jurisdictions which regulate employment pension plans.

The document is now available in English and French for industry comment. Interested parties in Ontario may obtain the document from PCO reception or may request that a copy be mailed. Written enquiries should be directed to the Communications Officer at the PCO address or, fax (416) 314-0650.

Comments on the draft proposal are requested to be sent to CAPSA by October 31, 1993. Please address comments to:

Canadian Association of Pension
Supervisory Authorities
c/o Superintendent of Pensions
Province of Saskatchewan
P.O. Box #3177
Regina, Saskatchewan S4P 3G7

CAPSA Releases a Discussion Paper on One Member or Individual Pension Plans (IPPs)

CAPSA members recently distributed a discussion paper on IPPs for industry comment on issues related to the regulation of IPPs.

Those interested in receiving the discussion paper should write or fax (416) 314-0699 the Communications Officer to obtain a copy (please include your full name, address and fax number).

Comments are requested to be sent to CAPSA by September 17, 1993:

CAPSA c/o M. Jean-Noel Martineau
Office of the Superintendent
of Financial Institutions
255 Albert Street
12th Floor, Kent Square
Ottawa, ON K1A 0H2

Pension Benefits Guarantee Fund Assessments Subject to Retail Sales Tax

The May 1993 Ontario Budget provides that as "a Fund created by statute intended to protect against risks to third parties" all payments to the PBGF are subject to the Retail Sales Tax ("RST"). It should be noted that this includes interest payments and the 20% late filing charge.

The Budget also states that "regular premiums with respect to existing contracts or plans in force on or before May 19, 1993 (Budget date) and on renewals of existing contracts without substantial change in terms or conditions of payment, paid before July 1, 1993, will be exempt."

In effect, except for the transitional impact of the pre-July 1, 1993 payment, tax will be payable in respect of PBGF assessments for periods of coverage ending after May 19, 1993.

To define terms, an assessment is due, under subsection 37(2) of Regulation 909, nine months after the last day of each fiscal year of the pension plan. This assessment payment is in respect of coverage for twelve months after the fiscal year end of the plan.

For employers or plan sponsors with current year PBGF assessment filings (Schedule B) due, the implications are as follows:

- (1) For assessment dates that fall after February 19, 1993 (coverage ending on May 19, 1993 [Budget date]), for which payment was made before July 1, 1993, no RST is levied on the payment made. If upon filing the Schedule B, it is determined that there is still a net assessment balance owing, RST is due only on the net balance.
- (2) For assessment dates that fall after February 19, 1993 (coverage ending on May 19, 1993), for which payment was made after June 30, 1993, RST is payable on the entire PBGF assessment and the additional amounts must be remitted.

For employers/plan sponsors with past year PBGF assessment filings (Schedule B) still outstanding, it is the position of the Minister of Finance that for assessment/premium dates that fell before February 19, 1993 (coverage ending on May 19, 1993 [Budget date]), there will be no RST levied, regardless of when payment is made. An Order-in-Council will be passed to eliminate the tax liability.

Update on Ontario's LIF Option and Revenue Canada

An article, in the March 1993 issue, provided information concerning how proposed amendments to the Income Tax Act (Canada) (ITA) would permit a direct transfer of the value of a benefit from a registered pension plan to a Life Income Fund (LIF).

The proposed amendments were part of the federal government's Bill C-92 which was given Royal Assent on June 10, 1993. Subsections 147.3(1) and (4) of the ITA now provide the authority to transfer a benefit value from a registered pension plan to a LIF on a tax-deferred basis. However, prior to proceeding with the direct transfer, administrators should ensure that the portability provisions in their plan documents contain wording which is acceptable to Revenue Canada.

LIF - Minimum and Maximum Withdrawal Tables

The PCO will publish the minimum and maximum withdrawal tables annually to assist readers.

"Basic Pension Facts" New Feature in Next Issue of the Bulletin

We plan to publish some basic pension statistics expected to be of interest to those practising in the pension field. Our purpose is to highlight this information so that readers will be aware of developing trends.

Bulletin Board Service Replaces Rapidfax Network

On April 5, 1993 the PCO's Rapidfax Network was replaced by the new electronic bulletin board service. All of the PCO published policies are now available through this service and time-sensitive announcements and notices will be made available to industry professionals through this medium. The service is operated by Canada Remote Systems (CRS) Online. For more information on this service, see page 33.

Office Consolidation of the PBA and Regulation 909 Available

The office consolidation, including all amendments made to the Regulation up to December 31, 1992, is now available at Publications Ontario, 880 Bay Street, Toronto, Ontario M7A 1N8.

The office consolidation costs \$14.00 plus \$0.98 GST for a total of \$14.98. Prepayment is required although company purchase orders (POs) are acceptable and may be faxed to (416) 326-5317 or mailed. (If PO is faxed, do not mail hard copies of purchase orders.) An invoice will be issued for POs that are faxed.

Personal cheques and money orders should be made payable to the Minister of Finance. Phone orders with Mastercard and VISA are accepted. Call (416) 326-5300 or toll free call 1-800-668-9938.

Unfortunately, copies are not available from the PCO.

Status of the French Version of Regulation 909

The French version of the Regulation, including all prescribed forms, is expected to be available by November, 1993.

Status of the French Version of CAG #5 and Pension Plan Document Checklist

The French version of the CAG #5 - *A Guide to Completing the Pension Plan Document Checklist*, Effective November 1, 1992 and the form - the Pension Plan Document Checklist - is expected to be available by mid September, 1993.

Anyone interested in obtaining the French version of CAG #5, the Pension Plan Document Checklist and the French version of Regulation 909 should write (or fax) their request to the Communications Officer.

PCO Members' Booklet In Demand

The PCO recently distributed a copy of *Understanding Your Pension Plan: A Guide for Members of Employer Sponsored Pension Plans* to

subscribers of *Benefits Canada*. We have been pleased with the response from employers/plan sponsors and administrators who have requested booklets for their plan members.

Our initial print run of 50,000 English booklets is now out of print. We are considering a reprint to accommodate approximately 10,000 back orders. The PCO is unable to process any more orders from companies at this time.

PCO Mailing List Review

The first issue of the *PCO Bulletin* was published in February 1990. At that time, copies were sent to all plan administrators and in some cases, employers/plan sponsors. At its peak, over 10,000 copies of each edition were distributed.

We are now updating the mailing list to eliminate waste and to ensure that copies are sent only to those readers who wish to receive it. We are encouraging colleagues to share copies of the *PCO Bulletin* to the extent possible. In future, companies requesting multiple copies will receive them parcel post for internal distribution through a single contact.

Results

In the March 1993 *PCO Bulletin*, readers were asked to return a form indicating their wish to continue receiving the *PCO Bulletin*. Almost 4,000 readers responded and many made favourable and helpful comments on the *PCO Bulletin*. The mailing list has been updated accordingly.

Next Steps

Those who have not already responded will receive a special version of this issue of the *PCO Bulletin* and will have a final opportunity to remain on the mailing list. These readers can express their interest by completing the card on the front cover and returning it to the PCO. This will be the last issue of the *PCO Bulletin* sent to those who have not indicated their wish to remain on the mailing list.

Special Notices

The following two notices appear for general information. Pension plan administrators will receive the notices and other materials by direct mail.

These notices deal with aspects of AIR filings, PBGF Assessment - Schedule B (with instructions for completing Schedule B), the requirement to collect retail sales tax on PBGF assessments and other related items.



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

NOTICE TO ADMINISTRATORS
OF ONTARIO-REGISTERED DEFINED BENEFIT
PENSION PLANS

WITH FISCAL YEARS ENDING
ON OR AFTER NOVEMBER 26, 1992
AND PRIOR TO AUGUST 1, 1993

Pension Benefits Guarantee Fund (PBGF) Assessment Changes

The Pension Benefits Guarantee Fund Notice which you received with the Annual Information Return package sent to you earlier this year advised that an amendment to the Regulation under the Pension Benefits Act was filed in November 1992 which affected the Pension Benefits Guarantee Fund filings. The notice also advised that a revised form for the calculation of the PBGF assessment would be sent to you as soon as it became available.

The revised Schedule B - Pension Benefits Guarantee Fund Assessment Form for plans other than Qualifying Plans (as described in subsection 5.1 of Regulation 909) is enclosed as well as the instructions for its completion. Schedule B must be completed and certified (signed) by the plan Actuary and the plan Administrator.

The signed Schedule B and the cheque, if applicable, must be filed with the Pension Commission of Ontario on or before the assessment date of the plan. Please make cheques payable to the PENSION BENEFITS GUARANTEE FUND. Note: in order to be acceptable, a filing must include a completed and signed Schedule B together with the applicable fee.

If you previously submitted a payment for the PBGF assessment, you are required to complete and submit the enclosed Schedule B and any outstanding assessment amount, whether or not you filed the old Schedule B.

For more information, refer to the article in the March 1993 issue of the PCO Bulletin, entitled Highlights from O. Reg. 712/92 concerning Solvency Valuation and PBGF Coverage.

Enquiries may be directed to Rick Kennedy at (416) 314-0616.

enclosures



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

**INSTRUCTIONS FOR COMPLETING THE
ANNUAL INFORMATION RETURN
SCHEDULE B*
PENSION BENEFITS GUARANTEE FUND ASSESSMENT**

Note: In these instructions:

- "the Act" refers to the Pension Benefits Act, R.S.O. 1990, c.P.8
- "the Regulations" refer to Regulation 909, R.R.O. 1990, as amended by O. Reg. 712/92 effective November 26, 1992
- "the old regulations" refer to Regulation 909, R.R.O. 1990 as it read prior to November 26, 1992.

Background

Subsection 18(6) of the Regulations requires administrators of pension plans providing defined benefits to file, as an attachment to the annual information return, a certificate in respect of the annual assessment payable by the employer to the Pension Benefits Guarantee Fund. To meet this requirement, the Annual Information Return - Schedule B must be completed and filed with the Commission on or before the assessment date for such plans. The following categories of plans are exempted from this requirement:

- Multi-employer plans and other plans described in subsection 6(1) of the Regulations.
- Plans listed in subsection 47(1) of the Regulations.
- Plans established less than three years prior to the assessment date.

Schedule B does not apply to "qualifying plans" as described in subsection 5.1 of the Regulations. Since there is no schedule for such plans, the initial special report to be filed for these plans must set out all the information required by subsection 5.3 of the Regulations.

Schedule B applies to all other plans with an assessment date on or after January 1, 1993, except for plans with a fiscal year-end before November 26, 1992 for which the employer had paid the assessment on or before December 31, 1992.

* For Schedule B, please refer to page 14.

PART I - To be completed by the Pension Plan Administrator

Applicability of PBGF assessment rules:

1. For all pension plans with a fiscal year-end after March 31, 1992 but before November 26, 1992, the Regulations apply unless the PBGF assessment for the plan was paid on or before December 31, 1992.
2. For all pension plans with a fiscal year-end on or after November 26, 1992, the Regulations apply.

Assessment date:

The assessment date, with respect to any fiscal year of a pension plan, is nine months after the last day of the fiscal year-end of the plan.

Actuarial reports:

Actuarial reports include reports filed under any of sections 3, 4(6), 5(5), 13 or 14 of the Regulations, but exclude reports filed under subsection 5(11) of the Reg-

ulations (election not to redetermine). They also include cost certificates filed under subsection 3(1) of the Regulations. The PBGF assessment amount must be calculated based on the information contained in the last actuarial report or cost certificate filed with the Commission.

For assessment purposes, a report filed with the Commission is considered to be current if the period covered by the report includes the assessment date. If the assessment calculated in the schedule is based on a report that is not current, it must be recalculated by completing another Schedule B when a current report is filed. The current report must be filed within 9 months of its valuation date. Any increase in the assessment resulting from a recalculation based on the current report must be paid within 60 days after the date on which the report is filed. A decrease in the assessment resulting from a recalculation will be refunded.

PART II - To be completed by the Actuary

All amounts to be included in this section are determined as at the valuation date of the last actuarial report or cost certificate filed with the Commission.

Where the valuation date of the report was prior to November 26, 1992

The PBGF assessment base should be calculated using the formula as prescribed under the Regulations but based on the solvency information contained in the report.

If the actuary has determined that the PBGF assessment base is nil, the actuary should skip boxes 201 to 206 inclusive and enter zero in box 207.

Box 201 Market value of investments held by the pension fund plus any cash balances and accrued or receivable income items.

Box 202 Solvency liabilities as defined in the old regulations excluding any liabilities attributable to the application of section 74 of the Act.

Box 203 PBGF liabilities represent the portion of the solvency liabilities respecting employment in Ontario, excluding any liabilities attributable to the application of subsection 74(7) of the Act.

Solvency liabilities should be the amount determined in accordance with the old regulations without any adjustment for the liabilities for benefits permitted to be excluded under the Regulations.

Box 204 The portion of the solvency liabilities as reported in box 202 respecting employment in Ontario.

Box 205 Divide the amount in box 204 by the amount in box 202.

Box 208 Enter zero.

Where the valuation date of the report was November 26, 1992 or later

The amounts of PBGF liabilities and PBGF assessment base should be taken directly from the report (which would have been prepared in accordance with the Regulations).

If the actuary has determined that the PBGF assessment base is nil, the actuary should skip boxes 201 to 206 inclusive and enter zero in box 207.

Box 201 Market value of investments held by the pension fund plus any cash balances and accrued or receivable income items, excluding the value of any qualifying annuity contract of the plan.

Box 202 Solvency liabilities as defined in the Regulations.

Box 203 PBGF liabilities represent the portion of the solvency liabilities that relates to the Ontario plan beneficiaries, calculated under the Regulations.

Box 204 Not applicable.

Box 205 Divide the amount in box 203 by the amount in box 202.

Box 208 Amount of additional unfunded liability for plant closure and/or permanent layoff benefits subject to the 2 percent assessment under item 37(4)(a)(ii) of the Regulations.

PART III - To be completed by the Pension Plan Administrator

A Subsection 37(12) of the Regulations permits the employer to reduce the PBGF assessment base by any special payments made by the employer that are in excess of the minimum special payments required in accordance with the last actuarial report filed and that are made between the valuation date of the report and the assessment date (prior to any application of prior year credit balance). These include special payments made between the fiscal year-end date and the assessment date.

The special payments made by the employer for the indicated period(s) must be accrued and paid as of the assessment date.

B ONTARIO PLAN BENEFICIARIES include:

- members employed in Ontario;
- former members (as defined under the Act) who were employed in Ontario immediately before they ceased to be members, other than former members for whom all pension and ancillary benefits are secured under a guaranteed annuity contract or a contract issued under the Government Annuities Act (Canada); and
- the surviving spouses or beneficiaries of former members who were Ontario plan beneficiaries as above, if the surviving spouses or beneficiaries are receiving pensions from the plan as a result of the deaths of the former members.

CALCULATION OF RETAIL SALES TAX ("RST"):

Where a payment was made before July 1, 1993 in respect of an assessment due on the assessment date

Box 225 If payment was **made before July 1, 1993**, this amount can be deducted from the total Guarantee Fund assessment in order to calculate the net amount of the assessment subject to RST.

Box 226 The amount of RST payable is 8% of the amount in box 225.

Where a payment is made after June 30, 1993 in respect of an assessment due on the assessment date

Box 228 If payment is **made after June 30, 1993**, this amount is to be deducted from the total Guarantee Fund assessment owed after application of the RST to the total assessment.

REMITTANCE OF PBGF ASSESSMENT

The total amount of PBGF assessment owing, including the applicable retail sales tax, is to be remitted in one cheque payable to the Pension Benefits Guarantee Fund along with Schedule B.

Note: The AIR fees must be remitted by a separate cheque payable to the Minister of Finance along with Schedule A.

An employer who fails to pay the Guarantee Fund Assessment before the assessment date will be required to pay:

- (a) 120 per cent of the Guarantee Fund Assessment amount; plus
- (b) interest applied on the amount calculated in part (a) at a rate equal to 3 per cent plus the chartered banks' rate on prime business loans as of the assessment date for the period from the assessment date to the date the Guarantee Fund Assessment is received by the Commission; plus
- (c) 8% RST applied to the sum of the amounts calculated in parts (a) and (b).

If the total Guarantee Fund Assessment is \$25 or less the employer is not required to pay the assessment. However, the schedule must still be filed with the Commission.

Note: In any year for which no special payments are required, any actuarial gain may be applied to pay the annual assessment to the Guarantee Fund; otherwise the employer must pay the assessment from its general revenue.



(Note: Please consult the instructions for completing Schedule B)

PART I (To be completed by the Pension Plan Administrator)						
Name of Employer / Plan Sponsor						
Name of Pension Plan						
Fiscal Year-End Date of Pension Plan	Year	Month	Day	Provincial Registration Number		
	/	/				
				Valuation Date of last Actuarial Report filed with the Commission	Year	Month Day
					/	/
Assessment Date	Year	Month	Day	Period covered by the Report		
	/	/		Year	Month	Day
				from	/	/ to / /

PART II (To be completed by the Actuary)	
Please complete the following based upon the last actuarial report filed with the Commission:	
NOTE: If the PBGF assessment base is nil, skip boxes 201 to 206 inclusive and enter zero in box 207.	
Market value of investments	201 <input type="text"/>
Solvency liabilities of the pension plan	202 <input type="text"/>
PBGF liabilities	203 <input type="text"/>
Solvency liabilities respecting employment in Ontario	204 <input type="text"/>
Ontario asset ratio (divide the amount in box 203 or, if applicable, box 204 by the amount in box 202)	205 <input type="text"/>
Ontario portion of the fund (multiply the amount in box 201 by the ratio in box 205)	206 <input type="text"/>
PBGF assessment base (subtract the amount in box 206 from the amount in box 203; if negative, enter zero)	207 <input type="text"/>
Amount of additional unfunded liability for plant closure and/or permanent layoff benefits subject to the 2% assessment per Reg. 37(4)(a)(ii)	208 <input type="text"/>
Note: The Actuary must also complete Section A of Part IV (Declaration of the Actuary).	

PART III (To be completed by the Pension Plan Administrator)

A. CALCULATION OF APPLICABLE PBGF ASSESSMENT BASE

Has the employer made special payments between the valuation date of the last actuarial report filed and the assessment date, in excess of the minimum special payments required in accordance with that report?

☐ Yes (Please complete the following) ☐ No (Enter amount from box 207 into box 210)

Periods between the valuation date of the last report and the assessment date	Minimum Special Payments Required Based On The Last Actuarial Report		Special Payments Made By The Employer
	Going Concern Unfunded Liability	Solvency Deficiency	
First Year (or part thereof) covering the period Year Month Day to Year Month Day / / / /			
Second Year (or part thereof) covering the period Year Month Day to Year Month Day / / / /			
Third Year (or part thereof) covering the period Year Month Day to Year Month Day / / / /			
Total For All Periods	(A)	(B)	(C)

Amount in excess of the minimum special payments. 209
[Amount (C) minus the sum of Amount (A) and Amount(B)]

Applicable PBGF assessment base (subtract amount in 210
box 209 from amount in box 207; if negative, enter zero)

PART III Continued (To be completed by the Pension Plan Administrator)

B. CALCULATION OF GUARANTEE FUND ASSESSMENT

NOTE: If amount in box 210 is zero, proceed to box 215.

0.5% of any portion of the applicable PBGF assessment base (amount in box 210) that is less than 10% of the PBGF liabilities (amount in box 203) 211

1% of any portion of the applicable PBGF assessment base (amount in box 210) that is 10% or more but less than 20% of the PBGF liabilities (amount in box 203) 212

1.5% of any portion of the applicable PBGF assessment base (amount in box 210) that is 20% or more of the PBGF liabilities (amount in box 203) 213

Sum of amounts in boxes 211, 212 and 213 214

Number of Ontario Plan Beneficiaries (see instructions) as at the fiscal year-end date:

Active members 215

Others 216

Total (Add numbers in boxes 215 and 216) 217 X \$1.00 = 218

Add amounts in boxes 214 and 218 219

Number of Ontario Plan Beneficiaries (number in box 217) X \$1.00 = 220

Basic Assessment (lesser of amount in box 219 or amount in box 220) 221

Additional Assessment (2.0% of amount in box 208) 222

Total Guarantee Fund Assessment (add amounts in boxes 221 and 222, maximum \$4,000,000) 223

Less payment remitted before July 1, 1993 in respect of the assessment due on the assessment date 224

Total Assessment Subject to Retail Sales Tax (Subtract amount in box 224 from amount in box 223) 225

Retail Sales Tax (8% of amount in box 225) 226

Sub-total (add amounts in boxes 225 and 226) 227

Less payment remitted after June 30, 1993 in respect of the assessment due on the assessment date 228

Total amount to be remitted or refunded (subtract amount in box 228 from amount in box 227) 229 230
to be refunded to be remitted

Please remit cheque payable to: **PENSION BENEFITS GUARANTEE FUND**

PART IV (To be completed by the Actuary and Pension Plan Administrator)

A. Declaration of the Actuary

As the Actuary of the Pension Plan, I certify that to the best of my knowledge and belief the information reported in Part II is true and correct.

Signature

_____ Date _____ Professional Designation _____

Name (Please Print)

Telephone

Fax

()

()

Corporate Affiliation

B. Declaration of the Pension Plan Administrator

As the Pension Plan Administrator, I certify that to the best of my knowledge and belief the information reported in Part I and Part III is true and correct.

Signature

_____ Date _____ Title _____

Name (Please Print)

Telephone

Fax

()

()



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

**NOTICE TO PLAN ADMINISTRATORS
OF ALL ONTARIO-REGISTERED PENSION PLANS
WITH FISCAL YEARS ENDING
ON OR AFTER AUGUST 1, 1993**

For All Plan Types

An Annual Information Return (AIR) for a pension plan with a fiscal year ending on or after August 1, 1993 should satisfy the following requirements and file with the PCO on or before the due date:

- the AIR form must be completed and signed (certified by the plan administrator);
- AIR filing fees payable must be calculated by completing Schedule A and must accompany the AIR filing; and
- the cheque, for AIR filing fees, is payable to the Minister of Finance.

All of the above requirements must be satisfied in order that the AIR be acceptable for filing purposes. Late fees (penalty plus interest) will be levied on all AIR filings received after the due date.

For Defined Benefit Type Plans Also Required to File a PBGF Assessment

Pension plans also required to file a PBGF assessment must complete, certify and file Schedule B - Pension Benefits Guarantee Fund Assessment form. Schedule B is enclosed as well as the instructions for its completion. Schedule B must be completed and certified (signed) by the plan Actuary and the plan Administrator.

The signed Schedule B and the cheque must be filed with the Pension Commission of Ontario on or before the assessment date of the plan.

A complete filing for such plans includes the items listed above for all plan types plus:

- the completed and certified PBGF assessment (Schedule B); and
- a single cheque for the PBGF assessment and the retail sales tax* payable to the Pension Benefits Guarantee Fund.

Separate cheques are required for AIR filing fees and the PBGF assessment because they are payable to different payees. The PBGF assessment cheque must include remittance for retail sales tax.

* PBGF Assessments Subject to Retail Sales Tax

For general information on this requirement, please refer to the announcement in the summer 1993 issue of the PCO Bulletin. For details on how to calculate the retail sales tax, please refer to the Instructions for Completing the Annual Information Return Schedule B - Pension Benefits Guarantee Fund Assessment accompanying this notice.

* * *

OTHER ITEMS RELATED TO ALL PLAN TYPES

Penalty Charges for NSF Cheques

The Minister of Finance recently announced that O. Reg. 754/92 has been filed. It amends s. 8(1) of the Regulation under the Financial Administration Act to provide that a penalty of \$35.00 will be charged for all cheques submitted in payment to the province of Ontario which are returned as non-negotiable.

Not all dishonoured cheques are returned due to insufficient funds (generally referred to as NSF cheques). Other examples of non-negotiable cheques returned by financial institutions include those where the account is closed, funds are not cleared or funds are frozen or, the signature is missing, illegible or unauthorized.

The \$35.00 penalty will apply to any dishonoured cheque submitted to the PCO.

This procedure will be effective for all cheques received by the PCO on or after September 30, 1993. The Minister of Finance will review annually the amount of penalty to be charged.

Working Copies of the AIR and Applicable Schedules

The current practice of mailing working copies of forms (which accompany the pre-printed AIR forms) to plan administrators will cease for plans filing AIRs with fiscal years ending on or after September 30, 1993.

enclosures

Editor's Note: These Notices are reprinted for general information. Plan administrators will receive the applicable Notice, pre-printed AIR, Schedule B and "Instructions for Completing the Annual Information Return Schedule B" by mail.

Readers will find Schedule B on page 14 and Instructions for Completing the AIR Schedule B on page 11 of this issue of the PCO Bulletin.

Court Decisions

Brewers Retail Inc. Decision

The Divisional Court upholds a PCO requirement that pension plans must be administered in accordance with plan documents filed with the PCO.

On May 28, 1993, three judges of the Divisional Court upheld a decision of the Pension Commission of Ontario in relation to the pension plan for bargaining unit employees of Brewers Retail Inc.

The plan in question provided for a pension benefit to plan members which included three elements:

- a past service pension;
- a future service pension; and
- a supplemental pension to be paid to those members with thirty or more years of continuous service.

The plan provided that where a plan member chose a *spouse's option pension benefit*, the member's pension benefit would be reduced by a factor (based upon the respective ages of the member and his or her spouse). In accordance with the provisions of the PBA and the Plan, the surviving spouse would receive 60% of the former member's reduced pension benefit.

Brewers Retail Inc. contended that the plan text was ambiguous but that both the company and the union concurred that the supplemental portion of the pension was a "lifetime" benefit payable only to the former member and was therefore not subject to reduction (during the life of the former member) nor was it to form part of the benefit payable to the surviving spouse.

The Pension Commission ruled that the relevant provisions of the plan text were clear and unambiguous, that the plan must be administered in accordance with the plan documents filed with the PCO and that extrinsic evidence was not admissible in all the circumstances.

The Commission decided that the survivor benefit consisted of all three components and ordered that the survivor payment be retroactively adjusted to take the supplemental pension into account.

Brewers Retail Inc. appealed to the Divisional Court and argued that extrinsic evidence of the position of the company and the union was admissible. The Court concurred with the reasons given by the Pension Commission in the Commission's decision and dismissed the appeal. Costs were awarded to the Superintendent and were fixed at \$1,000.

The case is important as it confirms the position of the Pension Commission that, in accordance with the PBA, a plan must be administered in accordance with the plan documents filed under the Act, irrespective of any administrative practice agreed to by the employer and the union.

As a result of the decision, Brewers Retail Inc. will be required to recalculate pension benefits paid both to former members and their spouses and provide surviving spouses with the appropriate benefit.

For a photocopying charge, copies of the decision can be obtained from the Ontario Court (General Division) 130 Queen Street West, Toronto, Ontario M5H 2N5 or call (416) 327-5100. Reference court file #427/92.

Enfield Decision

This case deals with the duties of a pension plan administrator in administering a pension fund, and in particular, the duty to supervise agents under the Pension Benefits Act, 1987.

Re: R. v. Michael F. Blair, Jacques Lavergne and Donald (Ben) Webster, Ontario Court (Provincial Division), Judge M.H. Harris

Facts

Three pension plan administrators, Blair, Lavergne and Webster were all charged with failing to adequately supervise Carol Penhale, Investment Manager of the Enfield Master Trust Fund, as required by s.23(7) of the Pension Benefits Act, 1987 ("PBA").

They were all found guilty. Sentencing decision will be given on August 26, 1993.

Enfield Corporation held a controlling interest in Federal Pioneer Limited, and Federal Pioneer pension funds were held in the Enfield Master Trust Fund. Blair was President and CEO of Enfield, Lavergne was Vice President, Finance, and Webster was an outside director. All were members of Enfield's pension committee.

Penhale, the pension fund manager, previously pleaded guilty to breaching her fiduciary duties under s.23(1) of the PBA by using monies from Enfield's pension fund to purchase Enfield shares during an attempted hostile takeover of Enfield by another company. Penhale did not inform the pension committee of these actions, nor did she obtain authorization.

Issues

The issue in this case is whether Blair, Lavergne and Webster had failed in their duty to supervise Penhale in a reasonable and prudent manner as is required by s.23(7) of the PBA. To decide that, the Court dealt with a number of issues of fact and law, including:

- a) whether the pension committee constituted the “administrator”,
- b) whether the pension committee existed at the material time,
- c) the legal obligations of the pension committee members,
- d) the standard of care required by pension committee members applicable in these particular circumstances,
- e) whether every member of the pension committee adequately supervised Penhale,
- f) whether the administrator could delegate its duty of supervision to the trust company holding the pension fund,
- g) assuming the Crown established the offence, whether the members of the pension committee had exercised “due diligence” vis a vis Penhale and hence had a defence, and finally,
- h) whether the outside director, Webster, had a “limited mandate” as a plan administrator under the Ontario Business Corporations Act.

Rulings by the Court

The members of the pension committee argued they were not the plan administrators. They then argued that if they were found to be plan administrators, their supervision of Penhale was adequate. They also argued that they had delegated responsibility for ensuring no inappropriate transactions went on to the trust company handling the fund. The important rulings are:

a) Identification of Administrator

By a company resolution, the pension committee was clearly given full responsibility for the management of the pension funds. Therefore, although Enfield was the registered plan administrator, the pension committee was the de facto administrator for the purposes of carrying out the administrator’s duties.

b) Existence of Pension Committee

Although this particular pension committee had not been specifically reappointed because a directors’ meeting was cancelled, it continued to be a viable committee nevertheless, given the wording of the committee’s original appointment.

c) Legal Obligations of Committee Members

d) Standard of Administrator’s Care for an Internally Managed Pension Fund

The level of care required of plan administrators is that of a person caring for another person’s property. The “obvious” level of supervision required over Penhale, in these particular circum-

stances, was that of a prudent and reasonable person, taking into account the vulnerability of pensioners and the potential for disaster in losing pension funds.

e) Adequacy of Supervision

The Court found that the pension committee employed Penhale as their agent, and that she was not properly supervised. In the Court’s words, she was allowed to “run wild”. The defendants failed to establish a proper management control system or proper day to day supervision by a line management officer of Penhale. This is industry practice in relation to internal management of a pension fund.

f) Administrator Delegating Duties of Supervision

Montreal Trust was the custodian and trustee of the Enfield Master Trust pension fund. It sent monthly reports of all the pension fund transactions to Blair and Penhale, but not to the other committee members. Penhale’s share purchase showed up on the August 1989 report. The Court found that each committee member had a fiduciary obligation to read the reports. Webster & Lavergne did not receive the reports, and Blair either did not read the material report or if he did, he refused to reveal its significance, or commence an inquiry.

The Court found that the pension committee could not delegate its duty to supervise Penhale to Montreal Trust. The applicable legal principle is *delegatus non potest delegare*, which means that a delegate cannot delegate to another.

The Court held that the pension committee had breached s.23(7) of the PBA by failing to supervise Penhale in a reasonable and prudent manner.

g) Due Diligence by Pension Committee

In considering whether the pension committee members exercised due diligence in supervising Penhale and thus had a defence, the Court considered several factors, including these:

- i) the fiduciary relationship in caring for the property of others,
- ii) the vulnerability of the pension community,
- iii) the gravity of potential harm, and
- iv) the existence of a hostile takeover and the effect on the standard of due diligence.

The Court found there was no system of pension administration set up at all. There was no supervision of Penhale at all. There was no formal reporting relationship between the pension committee and senior management and Penhale, the pension fund manager. In sum, there was a complete lack of due diligence on the part of all the accused.

h) Off-Site Director Duties as Administrator

Webster argued that, as an outside director, he had a "limited mandate" under the Ontario Business Corporations Act. The Court held that the PBA overrides the OBCA in this case. As a pension plan administrator, Webster had a duty to assume a pro-active role dealing with the monies of vulnerable pension fund beneficiaries. Webster did not meet the standard of care required by the PBA.

Notices of Appeal Served

The lawyers representing Jacques Lavergne, Donald C. (Ben) Webster and Michael F. Blair have served the PCO with Notices of Appeal under the Provincial Offences Act from the June 29, 1993 decision of Judge M.H. Harris in R. v. Michael F. Blair, Jacques Lavergne and Donald (Ben) Webster. Sentencing in this matter will be on August 26, 1993. The appellants are appealing the conviction itself. No date for the appeal hearing has been set at this time. The appeal will be in the Ontario Court of Justice (General Division). The court file is #433/93.

For a photocopying charge, copies of the decision of Judge M.H. Harris can be obtained from the Ontario Court of Justice (Provincial Division) Records Office, Old City Hall, 60 Queen Street West, Toronto, Ontario M5H 2M4 or call (416) 327-5196. Reference case name, decision released on June 29, 1993.

Surplus Remaining in Wound-up Plans

According to the PBA a pension plan is not wound up until all plan assets have been distributed.

When a plan is being wound up, the administrator has a fiduciary obligation to ensure that any remaining surplus is paid out in an expeditious manner. In doing so, the administrator must ensure that any interests the beneficiaries or employer have in the surplus are assessed and protected. To satisfy its fiduciary duty, the adminis-

trator should obtain all advice necessary to resolve any surplus entitlement issues.

In determining surplus entitlement, a review should be made of all relevant plan and trust documents that have existed since the plan's inception. This review should include amendments, provisions regarding the power to amend, relevant predecessor plans, employee booklets, and the like.

If the administrator determines that the plan beneficiaries are entitled to the surplus, a supplementary wind up report should be filed, outlining the method by which the surplus will be distributed to the plan beneficiaries. If the administrator determines that the employer is entitled to the surplus, the administrator should advise the employer to apply to the PCO for its consent to distribute the surplus.

Should the administrator believe, after having obtained appropriate advice, that the matter of surplus entitlement is not likely to be readily resolved, appropriate legal steps should be taken to clarify the situation so that the surplus can be paid out.

The Superintendent is writing to administrators of pension plans in which the wind up has commenced but where the surplus remains undistributed. The purpose is to inform administrators that a proposed plan for the distribution of all surplus and a timetable for completion of the wind up is required by the Superintendent within 30 days of notification through the Superintendent's letter.

If the Superintendent is not informed of an administrator's proposed plan and timetable for implementation within the 30 day period, the Superintendent will take appropriate action (and make orders as required under section 87 of the PBA) to ensure that the surplus is distributed in order to permit the plan to be wound up. Should the administrator fail to act, the Superintendent may replace the administrator and appoint an independent administrator (subsection 71(1) of the PBA) with instructions to ensure that:

- any interest the beneficiaries or employer has in the surplus is fully assessed;
- entitlement to surplus is resolved forthwith; and
- appropriate steps are taken to pay out the surplus.

Administrators should be aware that other remedies exist under the PBA that may be exercised should the situation warrant.

Administrative Practices

Failure to Remit Member Contributions to the Pension Fund

There have been reports of sponsors of contributory plans deducting member contributions and not depositing them in the pension fund. Instead, member contributions are being appropriated by the sponsor and member contributions are being funded from surplus.

If the plan requires member contributions and these are deducted from member earnings but not remitted to the pension fund, the practice is unlawful. The Superintendent will be monitoring plans to identify any such practice and if identified, appropriate action will be taken. The Canadian Institute of Actuaries and the Ontario Institute of Chartered Accountants also have been informed.

[Editor's note: In the October 1992 issue of the PCO Bulletin (Volume 3, Issue 2 - page 14), a question dealt with the matter of contribution holidays for members.]

Written Notice of Proposal for Partial Wind Up of a Pension Plan

Subsection 68(2) of the PBA requires that written Notice of Proposal to Wind up a Pension Plan must be provided to specified persons or bodies who have an interest in the pension plan. In accordance with subsection 68(3), in the case of a proposal to wind up only a portion of a pension plan, the administrator is required to give notice to the members, former members or other persons who are "affected" by the partial wind up.

Therefore, in the case of a partial wind up of a pension plan, subsection 68(3) requirements with respect to the meaning of the word "affected" shall be as follows:

the administrator shall give written Notice of Proposal to Partially Wind up a Pension Plan to:

- a) the Superintendent;
- b) each member of the pension plan who is entitled to receive payment from the pension plan as a result of the partial wind up;
- c) each former member of the pension plan who is entitled to receive payment from the pension plan as a result of the partial wind up;
- d) each trade union that represents members of the pension plan;

- e) the advisory committee of the pension plan; and
- f) any other person who is entitled to receive payment from the pension plan as a result of the partial wind up.

In accordance with subsection 28(1) of the regulations under the PBA, notice required under section 68 of the PBA shall include,

- a) the name of the plan and its provincial registration number;
- b) the proposed date of the partial wind up;
- c) notice that each member, former member or any other person who will be entitled to receive payment from the pension plan as a result of the partial wind up will be provided with an individual statement setting out entitlements and options under the plan and the Act; and
- d) where a plan requires member contributions and the employment of the members will cease as a result of the partial wind up, notice of the member's right to make contributions in respect of the period of notice of termination of employment required under Part XIV of the Employment Standards Act.

In accordance with subsection 112(1) of the PBA, service of the notice by personal delivery or first class mail to all persons listed above is required. However, under subsection 112(3), when considered appropriate in the circumstances, the Superintendent may authorize an alternative form of notice or service of the notice.

Where the partial wind up results from an event affecting the employment of the members, such as in the case of a plant closure, the Superintendent may require that all members who are employed at the location, who participate in the plan on or after the date notice of the event is released, and who lose employment as a result of the event must be included as persons entitled to receive payment from the pension plan at partial wind up.

Please also refer to page 18 for information concerning transmittal of "Notice of Application for Payment of Surplus to the Employer"

Pre-hearing Conference Procedures

These procedures apply to all pre-hearing conferences held before the Pension Commission of Ontario (the "Commission") except those held pursuant to s.89 of the Pension Benefits Act, R.S.O. 1990 (the "Act").

A Reasons

The Commission recognizes the need for timely hearings that are both procedurally sound and efficiently run. Therefore, the following is

designed to shorten the length of hearings and minimize delays, interruptions and adjournments while ensuring that the rights and interests of those affected are protected.

Where documentation is complete and the Commission has no questions, it may choose to decide a matter without a hearing. All matters that proceed to an oral hearing will be preceded by a pre-hearing conference. However, not all pre-hearing conferences will lead to an oral hearing as it may be determined that the hearing be done by way of written submission.

B Purpose

The pre-hearing conference does not constitute day one of the hearing. No evidence will be given and no opening statements made.

The pre-hearing conference will:

- 1) resolve preliminary matters;
- 2) identify and simplify the matters in issue; and
- 3) establish procedures for the hearing.

It may also set hearing dates.

Attempts at settling the matter will not be undertaken by the presiding member at the pre-hearing conference.

I Resolve Preliminary Matters

All preliminary matters are to be raised at the pre-hearing conference, including objections or questions relating to notice, jurisdiction, disclosure of documents, bias, standing or adjournments.

The presiding member at the pre-hearing conference will not determine matters of substance. The presiding member will identify such issues and set out the method by which they will be resolved.

Objections or questions relating to preliminary matters will be entertained by the hearing panel during the hearing only if the circumstances relating to the objections or questions are unknown and cannot be reasonably foreseen at the time of the pre-hearing.

II Identify and Simplify Matters in Issue

Matters in issue will be settled, simplified and narrowed. The presiding member will identify those issues that the parties will be permitted to develop during the hearing.

III Establish Procedures for the Hearing

The presiding member shall consider any procedural matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

Commission policy on common procedural matters is set out below.

1) Transcripts

Commission policy is to conduct pre-hearings and hearings without court reporters. Parties may choose to hire their own. The Registrar shall assist

with any physical arrangements necessary to accommodate court reporting. All costs associated with the service are to be borne by those engaging the reporters.

2) Evidence at the Hearing

As is evident from the diagram of the Commission decision making process, all documentation must be complete before a matter will be considered by the Commission.

It is Commission policy to hear no oral evidence, apart from that of experts (discussed below), thus evidence of witnesses shall be by way of affidavit. (Opposing parties may privately arrange for cross examination on affidavit and provide a transcript of the same to the presiding member or hearing panel.) Questions of witnesses by the hearing panel will normally be by way of written interrogatory. Answers are to be in writing and copied to all parties.

Any evidence that comes to light after the documentation is complete must be fully disclosed immediately to all parties and to the Commission.

3) Expert Evidence at the Hearing

It is Commission policy to accept expert evidence by way of written report submitted in advance of the hearing.

A party who intends to present an expert report at the hearing shall, not fewer than 15 days before the pre-hearing conference, serve upon the other parties a summary signed by the expert setting out the expert's name, address, qualifications, a list of the issues which the expert's report will address and a summary of the expert's proposed evidence in respect of each issue.

No fewer than 30 days before the hearing, the expert report(s) shall be served upon all parties and the Commission.

No expert report will be accepted at the hearing, except in exceptional circumstances and with leave of the Chair, unless the requirements described in this section have been met.

At the hearing, the party calling an expert shall file the expert report and shall be permitted to examine the expert in chief. Usual rights of cross-examination and reply questioning will follow. It is to be noted, however, that the evidence led shall not differ materially from that contained in the filed report.

Commission policy is to exclude expert witnesses from the hearing until they have given evidence. Where a party requires the attendance throughout the hearing of one or more expert witnesses, that expert witness or witnesses may remain in attendance. In such a circumstance, the expert witness or witnesses shall normally give evidence before any other witness is called on behalf of the party. No expert witness of a party shall remain in attendance when another expert witness for the same party is testifying.

The Commission reserves the right to call its own expert. In such an event, all parties shall be advised of the name, address and qualifications of the expert being retained and the nature of the issues to be addressed by the expert. Any report prepared by the expert shall be circulated to all parties as soon as is practicable after its receipt by the hearing panel.

4) The Order of Proceeding

The Applicant shall go first. The order of proceeding among the respondents shall be set by agreement of the respondents failing which as determined by the presiding member.

5) Observers

Hearings are open to the public.

IV Set Hearing Dates

Following submissions on the amount of time reasonably needed to make each party's case, the presiding member at the pre-hearing shall set such time limits as is deemed necessary and appropriate. For example, the hearing may be restricted to argument and the time allowed for argument may be specified.

The presiding member may set the date, time and place of the hearing. Counsel are expected to attend with full particulars of their availability for hearing dates.

If, after consultation at the pre-hearing, it is not possible to schedule the hearing dates within a reasonable period of time, the dates will be assigned. Every attempt will be made to schedule the hearing within 60 days of the pre-hearing conference.

Once hearing dates are set, adjournments will not be permitted except in extraordinary circumstances and with leave of the hearing panel.

C Participants at the Pre-hearing Conference

All those wishing to participate in the hearing or their counsel, if any, shall attend the pre-hearing. Those attending must be authorized to make binding agreements concerning the matters set out above. It is expected that counsel representing the parties at the hearing will be the counsel present at the pre-hearing conference.

Those persons who wish to participate in the hearing should file notice of such intention containing their name(s), address(es) and the nature of their interest(s) with the Registrar not later than 15 days before the date of the pre-hearing. The Registrar will serve copies of such notices on all parties.

Where notice of a pre-hearing conference has been given and a party does not attend, the

presiding member may proceed in that party's absence and that party is not entitled to any further notice of the proceedings unless the presiding member otherwise directs.

D Location of the Pre-hearing Conference

After consultation with the parties, the Registrar will assign a date for a pre-hearing conference.

Pre-hearing conferences will be held at the Pension Commission of Ontario offices at: 101 Bloor St. W., 9th Floor, Toronto, Ontario.

Upon application and with the consent of all parties, pre-hearing conferences may be held by conference telephone call.

The normal time allotted for a pre-hearing conference will be 3 hours. Longer time needs should be brought to the attention of the Registrar at the time of scheduling of the pre-hearing.

E Conduct of the Pre-hearing Conference

The pre-hearing conference will be conducted by one member of the Commission. With the consent of all parties, conveyed in writing to the Registrar at least 10 days before the pre-hearing, the presiding member at the pre-hearing may serve as a member of the hearing panel.

Counsel to the hearing panel may be present at the pre-hearing. If so, all parties will be so advised in advance of the pre-hearing.

F Results of the Pre-hearing Conference

At the conclusion of the pre-hearing conference the presiding person shall report, orally or in writing or both, the results of the pre-hearing conference. If the report is given orally, the Registrar shall cause the report to be tape recorded and subsequently typed and distributed to the parties.

The report binds all parties to the pre-hearing conference. A copy of the report shall be placed before the hearing panel.

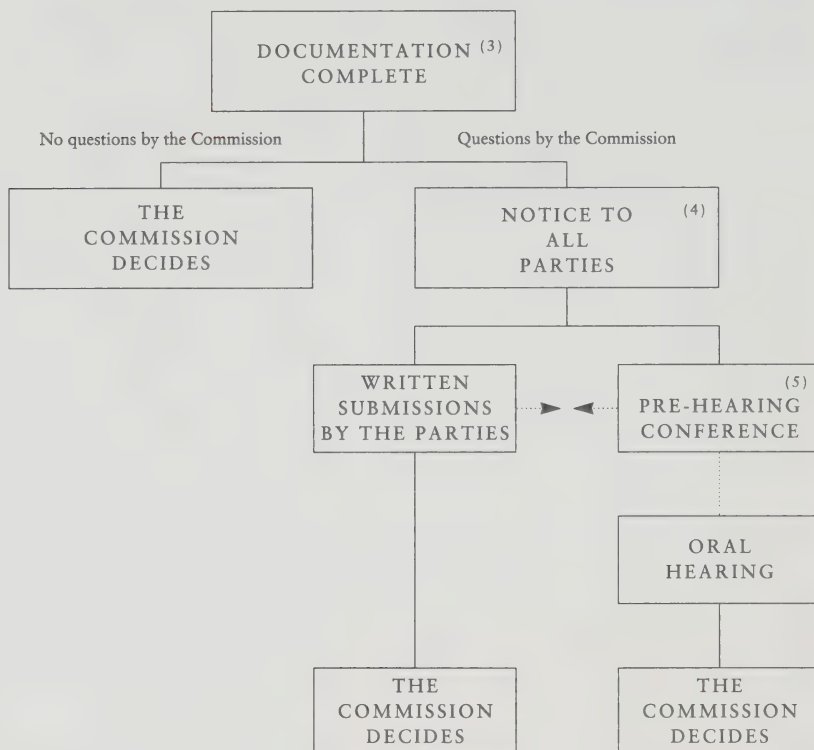
The report may form the basis for an order or orders of the Commission, which order(s) shall govern the conduct of the proceedings unless the Commission otherwise orders.

The Registrar can be contacted at the Pension Commission of Ontario, 101 Bloor St. W., 9th floor, Toronto, Ontario M7A 2K2; phone (416) 314-0624 or fax (416) 314-0620.

* * *

The following chart summarizes the process for resolving applications before the Commission. (Certain applications may result in a pre-hearing conference.)

THE COMMISSION⁽¹⁾ – DECISION MAKING PROCESS⁽²⁾



Explanatory Notes to the Commission - Decision Making Process

¹ the "Commission" denotes the Commission tribunal, not the staff of the PCO.

² This diagram does not apply to hearings held pursuant to s. 89 of the *Pension Benefits Act*, R.S.O. 1990, c. p.8.

³ All documentation is to be complete and in writing, and prepared by all parties. Documentation is not complete until a staff report is prepared by the staff of the PCO, provided to all parties and responses, if any, have been received by the staff. A staff report shall not be prepared until all documentation has been submitted by all parties. Documents that are normally part of the applicant's submissions include:

- | | |
|---|--|
| (i) an application; | (iv) comments on the staff report, if any; |
| (ii) all relevant documents and evidence; | (v) submissions on law, if any; |
| (iii) responses, if any, to submissions of other parties; | (vi) a brief of authorities, if any. |

⁴ If the Commission decides it needs further information before making its decision, the parties will be served with notice of the same. The notice will either request the parties to address specific questions by way of written submissions, or advise that the Commission has determined that a pre-hearing ought to be held. Where the notice indicates that a pre-hearing conference is to be held, it will indicate generally the purposes to be achieved through the pre-hearing conference.

⁵ See Pre-hearing Conference Procedures.

Contributions In Kind

PCO staff have received a number of inquiries on the question of whether employers or plan sponsors may make in-kind rather than cash contributions to pension funds. The Commission considered this matter at its meeting on March 25, 1993.

The Commission concluded that, in its view, employer or plan sponsor contributions in respect of normal cost and special payments must be made in cash. Similarly, employee contributions, if required, must be made in cash.

Surplus Attributable to Employee and Employer Contributions on Plan Wind up

The PBA provides that an employer who applies to the Pension Commission (the "Commission") for consent to payment of money to an employer that is surplus out of a pension fund must transmit notice of the application, containing the prescribed information, to the parties listed in subsection 78(2) of the Act.

Subsection 28(5) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") provides that:

"A notice required under subsection 78(2) of the Act for a plan that is being wound up shall contain, ...

c) the surplus attributable to employee and employer contributions,"

The following practice will be followed by the staff of the Pension Commission ("PCO staff") in assessing compliance with this requirement:

- a) As a general rule, PCO staff will provide comments to the Commission on the reasonableness of methods used to attribute surplus between employee and employer contributions. Where circumstances warrant, PCO staff may question the method or information used, or may refer the case to the Canadian Institute of Actuaries for review. In all cases, the final decision as to whether clause 28(5)(c) has been satisfied rests with the Commission.
- b) The plan actuary should provide PCO staff with:
 - i) a detailed description of the method used to determine the surplus attributable to employee and employer contributions,
 - ii) any information relevant to the attribution method, including information on the annual amount of employer contributions and employee contributions remitted since the inception of the plan or prior plan(s), if

any, or for such period of time for which this information is available; and

- iii) a statement by the actuary performing the calculation that, in the opinion of the actuary, the method employed is consistent with sound actuarial principles and practices, and is appropriate for the intended purpose.
- c) The onus is on the actuary to use a reasonable method. However, as a matter of policy, the Commission will not accept an assertion that it is not possible to determine the amount of surplus attributable to employee and employer contributions. Also, the Commission will not accept a notice which does not contain an estimate of the amount attributable to each.
- d) Subject to any professional standards established by the Canadian Institute of Actuaries, it is not the intention of the Commission to specify a method that must be used. The following are some of the concerns that the Commission has in the past requested the actuary to consider:
 - That the contributions of all members were considered, not just the contributions of members remaining at the time of plan wind up or surplus withdrawal.
 - That the historic actual fund rates of return were applied to the member contributions.
 - That the attribution recognizes any purchases of annuities for less than a member's contributions with interest.
 - That the attribution considers events for the life of the plan, not just from when the first surplus was revealed.
- e) In addition to setting out the amounts of surplus attributable to employee and employer contributions, the notice to plan members and others should include the following information:
 - i) there is no standard method of calculating the amount of surplus attributable to employee and employer contributions;
 - ii) the amounts of surplus attributable to employer and employee contributions are estimates determined by the actuary retained by the employer; and
 - iii) a detailed description of the method of attribution is available from the plan administrator.

Notice and Consent Requirements on Partial Plan Wind Up

Decisions which clarify the obligations of the plan administrator and the employer with respect to notice and consent requirements where a partial wind up of a pension plan occurs have been made by the PCO.

The three areas of uncertainty which have been clarified are:

- 1) To whom should the written notice of proposal to wind up the pension plan be provided in accordance with subsections 68(2) and (3) of the PBA?

This question has been addressed by an administrative practice concerning "Written Notice of Proposal for Partial Wind Up of a Pension Plan" on page 13 of this issue.

- 2) To whom should notice of the application to pay surplus out of a pension plan to an employer be provided in accordance with subsection 78(2) of the PBA?
- 3) Whose written agreement (consent) must be obtained under clause 8(1)(b) of the Regulation under the PBA before the Commission may consent to the payment of surplus to an employer in accordance with subsection 79 of the PBA?

These questions are clarified in this article.

Re: Notice of Application For The Commission's Consent to The Payment of Money That is Surplus Out of a Pension Plan to an Employer

Individual Written Notice by Personal Delivery or First Class Mail

In accordance with subsection 78(2) of the PBA, an employer who applies for the Commission's consent to pay surplus to the employer is required to transmit notice of the application to persons listed under that subsection. For the purposes of an application on partial plan wind up, individual written Notice of Application shall be required to be transmitted by personal delivery or first class mail to the following:

- a) each trade union that represents members of the plan who are entitled to receive payment from the pension plan as a result of the partial wind up;
- b) any advisory committee established in respect of the pension plan; and

- c) any of the following who are entitled to receive payment from the pension plan as a result of the partial wind up:

- i) plan members;
- ii) anyone defined by the pension plan text as a member or former member;
- iii) where the partial wind up results from an event affecting the employment of the members, such as a plant closure, all members employed in the location on or after the date notice of the event is released who lose employment as a result of the event;
- iv) former plan members entitled to a payment under the plan;
- v) any other persons who are entitled to receive payments from the pension plan as a result of the partial wind up. This includes:

- any former spouse or widow or widower of a member or former member who is receiving payments out of the pension fund, and
- any dependent child of a former member who is receiving payments out of the pension fund.

Alternative Service of the Notice of Application

The employer may choose to provide an alternative form of Notice of Application by a method of service other than personal delivery or first class mail for those persons identified below. In accordance with subsection 112(3) of the Act, the Superintendent may authorize alternative service by newspaper advertisement or otherwise, subject to approval of the contents of the proposed alternative form of notice and the method of service to the following:

- a) each trade union that represents members of the plan who are not entitled to receive payment from the pension plan as a result of the partial wind up; and
- b) any of the following who are not entitled to receive payment from the pension plan as a result of the partial wind up:
 - i) plan members;
 - ii) anyone defined by the pension plan text as a member or former member;
 - iii) former plan members entitled to a payment under the plan;
 - iv) any other persons who are entitled to payments under the pension plan on the date of partial wind up. This includes:
 - any former spouse or widow or widower of a member or former member

who is receiving payments out of the pension fund, and

- any dependent child of a former member who is receiving payments out of the pension fund.

The Commission's policy is that persons identified below are considered to be "former members" of the pension plan for the purposes of subsection 78(2)(a) of the PBA, and therefore on partial wind up are entitled to alternative service of the Notice of Application:

- a) former vested plan members who terminated employment within six years before the effective date of partial wind up, and who commuted or transferred their pension benefit out of the plan;
- b) former non-vested plan members who terminated employment within six years before the effective date of partial wind up;
- c) former plan members who had their pension benefits transferred to another pension plan sponsored by the same employer or another employer within six years before the effective date of partial wind up; and
- d) any plan beneficiary for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit.

Where considered appropriate in the circumstances, the Superintendent may require that any former member, as described in subparagraph d) above, whose pension, deferred pension or ancillary benefit was purchased before the date of partial wind up shall be entitled to service by personal delivery or first class mail of the Notice of Application and the Surplus Distribution Agreement. Accordingly, these former members may be required to consent to the application.

Re: Surplus Distribution Agreement

For the purposes of subsection 8(1)(b) of the Regulation where an application for the Commission's consent to the payment of surplus to an employer has been made with respect to a partial plan wind up, the employer must obtain the written agreement (consent) of:

- a) the collective bargaining agent who represents the members of the plan who are directly affected by the partial wind up, or if there is no collective bargaining agent, of at least two-thirds of the members of the plan who are entitled to receive payment from the pension plan as a result of the partial wind up; and
- b) such number of former members and other persons entitled to receive payment from the

pension plan as a result of the partial wind up as the Commission considers appropriate in the circumstances.

Accordingly, all persons who are entitled to receive individual written notice by personal delivery or first class mail shall be required to receive both the Notice of Application and the Surplus Distribution Agreement.

In order to satisfy subclause 8(1)(b)(iii), the written consent of two-thirds of the aggregate of those former members and other plan beneficiaries who are included in paragraph b) above must be obtained. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual application.

The Commission must be satisfied that all persons entitled to consent to the payment of surplus to an employer have received a copy of the written notice which fully discloses the surplus agreement proposed with respect to all parties who are to participate in the surplus allocation.

The administrative practice on "Regulation 8(1)(b) Surplus Distribution to an Employer on Full Wind up" is being revised to incorporate the requirements which are applicable on partial plan wind up.

Registration of Amendments

In the fall 1992 issue of the *PCO Bulletin*, new versions of the pension plan document checklist and guide outlining the procedure for making plan amendments (Compliance Assistance Guideline #5) were introduced (as were internal processing mechanisms based on this system) for the registration of all amendments received by the PCO on or after November 1, 1992.

In that issue, administrators were notified that the new pension plan document checklist should accompany all amendments received by the PCO on or after November 1, 1992. (Internal processing mechanisms are not in place for plan amendments received prior to November 1, 1992 at the present time.)

Plan administrators wishing to expedite the registration of submissions made prior to November 1, 1992 should complete fully the relevant sections of the new pension plan document checklist and file it with the PCO. The pension plan document checklist also provides a convenient way under Section III for plan sponsors to consolidate, summarize and certify that all plan amendments

submitted to the PCO and made prior to November 1, 1992 comply with the PBA.

The pension plan document checklist assists administrators in filing plan amendments and PCO staff in processing them on an expedited basis. The PCO is working toward establishing internal procedures to process submissions filed prior to November 1, 1992.

Typical amendments for registration include:

- amendments to pension plan texts
- restated plan texts
- amendments to trust agreements or insurance contracts
- amendment for full or partial wind up of a pension plan

Restated Plan Texts

Administrators of defined contribution pension plans, registered in Ontario prior to January 1, 1988 were required to file restated plan texts certifying compliance with legislative requirements with the Superintendent of Pensions by December 31, 1992. The deadline for filing restated plan texts for pension plans providing defined benefits was extended to December 31, 1993.

Administrators should complete Section I, Section II and Section IV of the new pension plan document checklist when filing a restated plan text.

Other Amendments

An amendment for a pension plan name change or one to improve eligibility or vesting requirements are examples of other amendments. Administrators must complete Section I, Section III (multiple amendments may be recorded here) and Section IV of the pension plan document checklist.

Restated Plan Texts Plus Other Amendments

Administrators must complete all sections of the pension plan document checklist.

New Pension Plan Document Checklist

Section I deals with general information about the plan and the nature of the application.

Section II relates to the application for registration of an initial or restated plan text.

Section III is an application for registration of other plan amendments.

Section IV is the administrator's certification that the applications for registration of pension plans, restated plan texts or plan amendments comply with the PBA and Regulation 909.

The French version of the pension plan document checklist and *Compliance Assistance Guideline #5*

will be available in photocopied form by mid September.

Your Questions Answered

Q. For the purposes of a transfer of a commuted value (except in wind up circumstances), subsection 19(1) of the Regulation 909 requires that the commuted value of a pension shall not be less than the value determined in accordance with "Recommendations for the Computation of Minimum Transfer Values for Pensions", (the "Recommendations"), issued by the Canadian Institute of Actuaries and effective on November 14, 1988.

In accordance with section 1.04 of Part I of the Recommendations, where a period of four months has passed following the valuation of the pension benefit, the actuary may revalue the benefit using a more current rate of interest. Does the option to recalculate a commuted value apply under subsection 19(1) of the Regulation?

A. The requirements of subsection 19(1) of the Regulation apply with respect to the interest rate assumptions set out in section 1.03 of Part I of the Recommendations. There is no intention to permit an adjustment of the interest assumption in the event that a period of months has expired between the date of termination and the date of payment. In accordance with subsection 24(11.1) of the Regulation, interest at the rate used to calculate the commuted value at the date of termination is required to be credited from the date of termination to the beginning of the month of payment.

Q. Is an auditor's report respecting the financial statements required in the following circumstance: the plan fund has over \$3,000,000 in assets calculated at market value, but included in these assets are deposit administration general funds contracts. If these contracts were excluded from assets there would be less than \$3,000,000 in assets in the plan fund?

A. No, there would be no auditor's report requirement until the market value of assets exceeded \$3,000,000, excluding the deposit administration general fund contracts.

However, it should be noted that section 80 under Regulation 909 allows an exemption for deposit administration contracts only if the contract is a general funds contract. Therefore, a deposit administration contract in segregated funds would not be exempt and would be included in assets. As a result, in this example, the financial statements would have been subject to audit. (Reference, s. 76(2) and s. 80 of Regulation 909, as amended.)

Q. Can a pension fund invest in a limited partnership? Can a limited partnership hold real estate and shares in a manufacturing business? Can the limited partnership be listed or unlisted on a stock exchange?

A. There is nothing in Regulation 909 preventing a pension fund from investing in limited partnerships, nor are there limits as to what the partnership may hold. However, a partnership may not be used to circumvent limits prescribed by the Regulation. For instance, if the pension fund's investment in the limited partnership exceed 10 per cent of total fund assets in terms of book value at the time of the investment, section 70(1) of the Regulation would be contravened. If the limited partnership in which a pension fund participated invested in only one parcel of real estate, the fund would be required to comply with the 5 per cent, per-parcel limit prescribed in section 71(1)(a) of the Regulation. The same principles apply to other holdings the partnership might have.

The use of partnership investments should be provided for in the Statement of Investment Policies and Goals of the pension fund. The administrator or investment manager should also ascertain the tax implications of partnership investments. The Income Tax Act (Canada) stipulates that partnerships constitute "foreign property."

With respect to whether a limited partnership can be listed on a stock exchange, there are no requirements in the Regulation to that effect. The possibility of listing on a stock exchange would have to be explored by the exchange's listing department. There are some limited partnerships that report their net taxable income or loss to the press at certain dates. These reports appear periodically in the financial pages of some newspapers.

Q. I am a member of a contributory pension plan. I do not want to continue contributing to the plan and intend to ask my employer to stop the automatic deductions from my earn-

ings. Does my employer have to comply with my request?

A. Your employer must administer the pension plan in accordance with the terms of the plan document and the minimum standards and requirements of the PBA. If you are a member of a pension plan which permits members to elect to suspend their membership in the plan, or the plan document includes that provision, your employer will comply with your request. Although you will make no further contributions and employer contributions made on your behalf will also cease, your inactive membership in the plan will continue to be credited for the purpose of vesting and locking-in the benefit accrued up to the date of suspension.

However, where the suspension provided is not included in the plan document, your contributory participation in the plan must continue until the earliest of:

- 1) the effective date of any amendment which provides for benefit accrual for your class of member on a non-contributory basis
- 2) your date of termination from the service of your employer, or
- 3) the date the pension plan is wound up.

It should also be noted that in a situation where a plan member was not required to contribute to the plan, the same response would apply.

Unless a suspension provision is included in the plan document, a plan member will have no alternative and must continue to accrue benefits in accordance with the terms of the pension plan.

Q. Under the terms of a purchase and sale agreement, the assets and liabilities attributable to the members of the pension plan which were affected by the sale will be transferred to the purchaser's pension plan. It will be some time before the valuation report is filed and the transfer approved by the Superintendent.

As an interim measure, would the Superintendent consent to a transfer to the purchaser's plan of a portion of the total estimated transfer amount?

A. No. Such an "interim transfer" would not be approved. There is no provision for such approval in Policy Statement #2 "Transfer of Assets Resulting from the Sale of a Business".

Q. I have reviewed subsection 18(5) of Regulation 909 and it appears that all plans that do not file an AIR within six months after the plan's fiscal year end are subject to a 20 per cent late filing fee. I note, however, that subsection 18(1) now allows a nine month filing period for defined benefit plans. I am an administrator of a defined benefit pension plan. How does this apply to me?

A. It is the position of PCO staff that, in the case of AIR filings for any plan that provides defined benefits, the 20 per cent late filing penalty indicated in subsection 18(5) will not be levied until after the nine month filing period has elapsed.

Q. In accordance with section 37 of the Regulation, the PBGF assessment is determined using information contained in the last report filed or submitted on or before the assessment date. Where a cost certificate has been filed after the valuation date of the last report and on or before the assessment date, must the PBGF assessment then be determined based on information contained in the cost certificate rather than in the last report?

A. A cost certificate is considered a report under subsection 3(1) of the Regulation. Therefore, the last report (i.e., actuarial valuation report or actuarial cost certificate) filed or submitted on or before the assessment date must be used to determine the PBGF assessment.

Q. I am drafting a Life Income Fund (LIF) document which will be marketed to:

- terminated pension plan members who have not yet transferred the benefit value*;
- and
- former members who have already transferred the benefit value to a locked-in RRSP

(These members are entitled to transfer a locked-in benefit value in accordance with Ontario's PBA.)

My client wants to include a provision which will permit a surviving spouse to continue the LIF under the surviving spouse's name where the LIF purchaser dies prior to using the fund balance for an annuity purchase. Would a LIF which includes this provision be an acceptable retirement savings arrangement for pension plan members who have terminated employment in Ontario?

A. A surviving spouse, who has not waived the pre-retirement death benefit, is a beneficiary

under a LIF rather than a successor annuitant in accordance with section 8 of Schedule 1 of the LIF regulation. [Note: the LIF regulation, O. Reg. 564/92 was filed on September 18, 1992, published in the *Ontario Gazette* on October 3, 1992 and published in the *PCO Bulletin* December 1992 issue, page 12.]

The surviving spouse is entitled to receive the balance of the LIF as a cash payment or as a tax-deferred transfer to any retirement savings arrangement on a non-locked-in basis. Pension monies which are locked-in under the PBA should not be used to purchase a LIF which continues to lock-in the balance of the LIF following the death of the purchaser.

** The term "benefit value" includes commuted values transferred from defined benefit plans and contributions, with interest, from defined contribution plans.*

Q. When a plan administrator instructs the pension fund trustee to transfer assets from the pension plan to another registered pension plan, should the administrator provide the trustee with documents which support the transfer? Is the trustee responsible for determining whether the transfer is consistent with the provisions of the pension plan and in compliance with the PBA before complying with the administrator's instruction?

A. The trustee of a pension fund has certain fiduciary responsibilities under trust and common law. As an agent of the plan administrator, a trustee is subject to certain standards that apply to the administrator (subsection 22(8) of the PBA). Accordingly, a trustee should not make a payment out of a pension fund unless the payment is consistent with the plan documents, the PBA, Regulation 909 and any applicable Commission policy. Where the Superintendent's written consent must be obtained prior to making a payment out of the fund, the administrator should provide the trustee with a copy of the Superintendent's letter.

A trustee is also responsible for monitoring payments into the fund (please refer to the reminder to report non-compliance in the March 1993 issue of the *PCO Bulletin*). In view of the responsibilities placed on the trustee, a trustee should not be expected to administer the fund without having access to relevant plan documents. The plan administrator and other agents of the administrator should ensure that copies of the pension plan documents, financial statements, actuarial reports and any other documents that are rel-

evant to the administration of the fund are provided to the trustee.

Q. I understand that in cases where solvency deficiencies are redetermined in accordance with Regulation 909, it is possible that the redetermination report may reveal a negative initial solvency balance. Subsection 5(25) of the Regulation states that nothing in section 5 relieves any persons from making any payments required under the Regulation in respect of the negative initial solvency balance of a plan. Is there a time period for liquidating this negative balance?

A. There is no provision under the Regulation which would permit a negative initial solvency balance to be amortized over a period of time. The administrator's written confirmation that any negative initial solvency balance identified in the redetermination report has been paid in full should be filed with the report.

PCO Policies Available on Electronic Bulletin Board System

In April, the PCO made its published policies and index available on a public electronic bulletin board system. Over the past few months, we encountered certain start-up difficulties and are taking measures to correct them. As well, we are working with the operator to enhance the PCO conference - to improve the accessibility of policies and to increase the number of file areas. These enhancements are expected to provide subscribers with a more practical and helpful electronic information service.

The following description will introduce interested readers to the bulletin board system: what it is, how it operates, and why readers might want to use it.

What is a Bulletin Board System?

A bulletin board system (BBS) is an on-line information service or public network that people with personal computers may access for information. The information on the network can be viewed, perused, or downloaded to the person's computer through a modem. (A modem is a computer attachment that allows information to be transferred over telephone lines from one computer to another.)

Operators of bulletin board systems are like central switching stations where information is posted for people to call up on their computers.

Bulletin board systems enable a significant amount of information, covering virtually any subject, to be made available to interested users. Accessing specific information, such as PCO policy files, is relatively simple. Instructions are available from the operator.

Why Would Readers of the PCO Bulletin Want Access?

Most information uploaded to BBS by the PCO consists of policy-related material published in the *PCO Bulletin and Compliance Assistance Guidelines* dating from November 1990. Time-sensitive information and announcements by the Minister of Finance in relation to amendments to the Regulation made from time to time will be available as well on BBS. All information on the PCO Conference #149 can be downloaded into the user's own computer system. The PCO no longer operates its Rapidfax service now that information can be provided by means of the BBS.

Who maintains the Bulletin Board Network?

The PCO policy database is loaded onto a BBS operated by CRS Online (Canada Remote Systems)(CRS). CRS operates a world-wide network of information on its bulletin board. The address of CRS Online is 12 Steinway Blvd., Unit #24, Etobicoke, ON M9W 6M5.

How to Access the PCO Conference on the Bulletin Board System?

Prospective users of this BBS service should direct their enquiries to CRS Online - not the PCO - at (416) 213-6000 or fax (416) 213-6038. Those making enquiries should advise the CRS Online operator that you have a specific interest in PCO information. CRS will send you an information package tailored to the PCO conference.

Subscription Information

Basic and corporate subscription fees are payable to CRS (not the PCO) in order to access the PCO's published policy database and other information. The basic subscription fee is \$144.40 per year for access to all conferences on the BBS. The single account corporate subscription is \$395. Ninety-day trial subscriptions are available. (Fees as at July 8, 1993.)

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need from the network. As well, CRS independently offers free seminars. The PCO may consider co-sponsoring a seminar to be held at Queen's Park in the fall if there is sufficient interest.

Superintendent of Pensions - Notices and Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) *Pension Plan for Salaried Employees of Jaeger Canada Equipment Ltd. (C-3041), March 2, 1993*
- 2) *Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895) (partial wind up), March 3, 1993*
- 3) *Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498) (partial wind up), March 3, 1993*
- 4) *Smith Brothers Inc. Pension Plan (C-1114), March 12, 1993*
- 5) *Golden Shield Resources Ltd. Virginiatown Mine Non-Union Staff Employees Pension Plan (C-101645), March 30, 1993*
- 6) *A Pension Plan for the Logging Employees of Levesque Lumber (Hearst) Limited (C-100643), March 30, 1993*
- 7) *The Pension Plan for Salaried Employees of Levesque Lumber (Hearst) Limited (C-100911), March 30, 1993*
- 8) *Pension Plan for Mill Employees of Levesque Lumber (Hearst) Limited (C-103325), March 30, 1993*
- 9) *Retirement Pension Plan for the Employees of Keen Community Credit Union Limited (C-13463), March 30, 1993*
- 10) *Zavitz Transport International Inc. Employees' Pension Plan (C-19208), March 31, 1993*
- 11) *Creeds Limited Employees' Pension Plan (C-6559), March 31, 1993*
- 12) *Trisen Tool and Die Ltd. Employees' Pension Plan (C-15454), March 31, 1993*
- 13) *Elan Corporation Pension Plan for Salaried Employees (C-11966), March 31, 1993*
- 14) *Retirement Plan for the Employees of Bayweb Limited (C-17781), April 14, 1993*
- 15) *Westminster Steel Corp. Employees Pension Plan (C-103525), April 23, 1993*
- 16) *Leigh Instruments Limited Executive Employees' Pension Plan (C-102779), April 23, 1993*
- 17) *Pension Plan for Hourly-Rated Employees of Provincial Crane Inc. (C-102256), May 10, 1993*
- 18) *Pension Plan for Salaried Employees of Provincial Crane Inc. (C-102257), May 10, 1993*
- 19) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905), May 10, 1993*
- 20) *The Pension Plan of Union Drawn Steel Company Limited For Eligible Salaried Employees Effective December 15, 1955 (C-5906), May 10, 1993*
- 21) *Sketchley Cleaning Services Limited Employees Pension Plan (C-15968), May 11, 1993*
- 22) *Sketchley Cleaning Services Limited Corporate Pension Plan (C-102999), May 11, 1993*
- 23) *Pension Plan for Employees of Hunter Brown Limited (C-14507), May 12, 1993*
- 24) *Van Dresser Limited Non-Contributory Pension Plan (C-100753), June 15, 1993*
- 25) *Van Dresser Limited Employees' Pension Plan (C-12548), June 15, 1993*
- 26) *Bell Technical Services Inc. Retirement Plan for Salaried Employees (C-101754), June 15, 1993*
- 27) *Retirement Plan for the Employees of Smart Turner Limited (C-11407), June 15, 1993*
- 28) *Pension Plan for Employees of Richmond Bros. Insulation Inc. (C-102967), June 15, 1993*
- 29) *Peter's Backyard Restaurant Ltd. Employees' Pension Plan (C-18342), June 15, 1993*
- 30) *Staff Pension Plan for Employees of R.B.P. (Canada) Limited (C-16901), June 15, 1993*
- 31) *St. Lawrence Foods Corporation Pension Plan (C-5475), July 9, 1993*

Orders

The Superintendent issued orders, pursuant to section 69 of the PBA (Wind-up Orders), as follows (effective date of wind up and date of order indicated, respectively):

- 1) *Pension Plan for the Employees of Orangeville Transport Limited (C-11108)* (effective September 19, 1991, March 25, 1993).
- 2) *Pension Plan for the Employees of Canadian Asbestos Services Ltd. (C-100273)* (effective February 29, 1992, April 15, 1993)
- 3) *Pension Plan for the Employees of Dilworth, Secord, Meagher and Associates Limited (C-11531)* (effective April 1, 1992, April 15, 1993)
- 4) *Pension Plan for Salaried Employees of Jaeger Canada Equipment Ltd. (C-3041)* (effective May 10, 1991, June 15, 1993)
- 5) *Trisen Tool and Die Ltd. Employees' Pension Plan (C-15454)* (effective September 30, 1990, June 15, 1993)
- 6) *Zavitz Transport International Inc. Employees' Pension Plan (C-19208)* (effective August 11, 1990, June 15, 1993)
- 7) *Pension Plan for Hourly Rated Employees of Jaeger Canada Equipment Ltd. (C-15969)* (effective May 10, 1991, June 15, 1993)
- 8) *Leigh Instruments Limited Executive Employees' Pension Plan (C-102779)* (effective April 12, 1990, June 22, 1993)
- 9) *Westminster Steel Corp. Employees Pension Plan (C-103525)* (effective October 24, 1991, June 22, 1993)
- 10) *Golden Shield Resources Ltd. Virginiatown Mine Non-Union Staff Employees Pension Plan (C-101645)* (effective July 4, 1989, June 30, 1993)
- 11) *Pension Plan for Mill Employees of Levesque Lumber (Hearst) Limited (C-103325)* (effective February 7, 1992, June 30, 1993)
- 12) *Retirement Pension Plan for the Employees of Keen Community Credit Union Limited (C-13463)* (effective June 2, 1989, June 30, 1993)
- 13) *The Pension Plan for Salaried Employees of Levesque Lumber (Hearst) Limited (C-100911)* (effective February 7, 1992, June 30, 1993)
- 14) *A Pension Plan for the Logging Employees of Levesque Lumber (Hearst) Limited (C-*

100643) (effective February 7, 1992, June 30, 1993)

- 15) *Pension Plan for Employees of Hunter Brown Limited (C-14507)* (effective September 30, 1991, July 8, 1993)
 - 16) *Pension Plan for Employees of Maher Inc. (C-10834)* (effective April 29, 1992, July 8, 1993)
 - 17) *Elan Corporation Pension Plan for Salaried Employees (C-11966)*, July 9, 1993
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Tribunal Activities

This section summarizes matters considered by the nine-member board in relation to the PCO.

1993 Commission Meeting Dates

The August 26, 1993 Commission meeting has been cancelled and the September 23, 1993 meeting has been moved to September 16, 1993. The Pension Commission will convene on the following Thursdays in 1993:

July 29, August 26 (cancelled), September 16 (changed from September 23), October 28, November 25, December 16, 1993.

PCO Board Members

The following members comprise the Commission:

M. Joseph Regan, Chairman
Eileen E. Gillese, Vice Chair
Darcie L. Beggs
M. David R. Brown
Kathryn M. Bush (appointed June 17, 1993)
Donald G. Collins (re-appointed June 2, 1993)
Robert F. Nickerson
Joyce A. Stephenson
Monica J. Townson

Hearings Before the Commission

General Motors of Canada Limited – Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Stelco Inc. Retirement Plan for Salaried Employees (C-6968)

The Decision is published in this issue of the *PCO Bulletin* with respect to a hearing held January 12, 14, 18, 19, 20, March 23, 26 and 29, 1993, to review a Proposal to Make an Order dated February 28, 1992, issued by the Superintendent of Pensions, that the plan be partially wound up. Stelco Inc. has appealed the decision of the Commission of July 7, 1993 to the Divisional Court.

Decisions from two pre-hearing conferences held July 7 and November 30, 1992 were published respectively in the *PCO Bulletin*, (Vol. 3, Issue 2, October, 1992 and Vol. 3, Issue 4, March 1993). A Decision relating to Neil K. Veinot is also published in this issue of the *PCO Bulletin*.

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

GenCorp Canada Inc. has requested a hearing with respect to a Notice of Proposal to Make an Order issued by the Superintendent of Pensions dated March 3, 1993 pursuant to section 69 of the Act that the plan be wound up in part effective September 27, 1991. Pre-hearing conference date - October 1, 1993.

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. has requested a hearing with respect to a Notice of Proposal to Make an Order issued by the Superintendent of Pensions dated March 3, 1993 pursuant to section 69 of the Act that the plan be wound up in part effective September 27, 1991. Pre-hearing conference date - October 1, 1993.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under Section 89 of the Act, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 regarding Amendment of August 1991 to Section 4.3 of the Plans.

Western Star Trucks Incorporated Pension Plan for Non-Bargaining Employees (C-18086)

The Decision is reserved with respect to a hearing held March 25 and May 27, 1993 on an application by Western Star Trucks Incorporated for the

consent of the Commission pursuant to subsection 78(1) of the Act and section 8 of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, to the payment of surplus from the Western Star Trucks Incorporated Pension Plan for Non-Bargaining Employees, Registration No. C-18086, to Western Star Trucks Incorporated.

International Playing Card Company Limited Pension Plan for Bargaining Unit Employees (C-4609)

A pre-hearing conference, with Ms. E. Gillese as the presiding member, was held on July 29, 1993 with respect to an application pursuant to subsection 8(2) of Regulation 909, R.R.O. 1990, as amended by O.Reg. 743/91 for the consent of the Commission to a payment of surplus to International Playing Card Company Limited. This application is made following a hearing before Mr. Justice Carter which was adjourned on October 21, 1992 until the consent from the Pension Commission is received.

Commission Decisions - Applications Approved Since February, 1993

Applications Approved Under Section 8 of Regulation 909, R.R.O. 1990 (as amended by Ontario Regulation 743/91) and Subsection 78(1) of the Act - Request for Consent to Return of Surplus Pursuant to a Court Order

At the Commission meeting held March 25, 1993, the Commission consented pursuant to subsection 78(1) of the Act and subsection 7a(2) of Ontario Regulation 708/87, as amended by Ontario Regulation 743/91, to filing with the court a consent to the payment of plan surplus as follows:

a) Allied Chemical Canada Salaried Employees Pension Plan (C-7468) - Application by Allied-Signal Canada Inc.

THAT, since the broad notice to all affected employees by means of newspaper advertisements was judged acceptable in the circumstances, the Commission consent pursuant to subsection 78(1) of the Act and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended by O.Reg. 743/91, to the payment of surplus to Allied-Signal Canada Inc. from the Allied Chemical Canada Salaried Employees Pension Plan in accordance with the Order of the Honourable Mr. Justice Lisaman dated December 12, 1991 (the "Court Order"), which consent shall not be effective until:

- i) the Superintendent of Pensions has registered a plan amendment filed by Allied-Signal Canada Inc. providing for the distribution of the members' share of the surplus (\$300,000) to the members; and

- ii) the administrator satisfies the Commission that, in connection with the partial wind ups affecting the Bendix Safety Restraints Ltd. Collingwood location, all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to clause 7a(2)(c) of O. Reg. 708/87 (as amended) as it read immediately before December 18, 1991 once the consent is effective.

b) *Retirement Plan (1988) for Salaried Employees of ArrowHead Metals Ltd. (C-15312)*

Payment of surplus to ArrowHead Metals Ltd. from the Retirement Plan (1988) for Salaried Employees of ArrowHead Metals Ltd., Registration Number C-15312, in accordance with the Court Order of the Honourable Madame Justice Greer dated May 21, 1992, provided that this consent shall not be effective until the Superintendent of Pensions has registered a plan amendment filed by ArrowHead Metals Ltd. providing for the distribution of the members' share of the surplus.

The Commission will file its consent with the Court pursuant to clause 7a(2)(c) of Ontario Regulation 708/87 (as amended) as it read immediately before December 18, 1991 once the consent is effective.

Applications Under Clause 8(1)(b) of Regulation 909, R.R.O. 1990 (as amended by Ontario Regulation 743/91) and Subsection 78(1) of the Act - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held February 25, 1993, pursuant to subsection 78(1) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990 as amended by Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows:

a) *The Pension Plan for Senior Executive Employees of Horizon Plastics Limited (C-16146)*

Payment of surplus to Horizon Plastics Limited from The Pension Plan for Senior Executive Employees of Horizon Plastics Limited, Registration Number C-16146, in the amount of \$167,200 as at October 1, 1990, plus investment earnings thereon to the date of payment.

b) *Pension Plan of Sullivan Payne Co. (Canada) Ltd. for Robert C. Holmes (C-100450)*

Payment of surplus to Sullivan Payne Co. (Canada) Ltd. from the Pension Plan of Sullivan Payne Co. (Canada) Ltd. for Robert C. Holmes, Registration Number C-100450, in the amount of \$23,488 as at December 31, 1989, plus investment earnings thereon to the date of payment.

c) *Pension Plan of Sullivan Payne Co. (Canada) Ltd. for Thomas G. Hopkinson (C-100451)*

Payment of surplus to Sullivan Payne Co. (Canada) Ltd. from the Pension Plan of Sullivan Payne Co. (Canada) Ltd. for Thomas G. Hopkinson, Registration Number C-100451, in the amount of \$33,182 as at December 31, 1989, plus investment earnings thereon to the date of payment.

d) *Bomac-Batten Limited Pension Plan "A" (C-15799) - Application by The Laird Group Inc.*

Payment of surplus to The Laird Group Inc. from the Bomac-Batten Limited Pension Plan "A", Registration Number C-15799, in the amount of \$37,707.50 as at August 1, 1989, plus investment earnings thereon to the date of payment.

e) *Pension Plan for Niagara Falls Salaried Employees of Carborundum Pulpstones Incorporated (C-19482)*

Payment of surplus to Carborundum Pulpstones Incorporated from the Pension Plan for Niagara Falls Salaried Employees of Carborundum Pulpstones Incorporated, Registration Number C-19482, in the amount of \$108,126 as at December 31, 1990, plus investment earnings thereon to the date of payment. **This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.**

At the Commission meeting held March 25, 1993, pursuant to subsection 78(1) of the Act and Clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows:

a) *The Croydon Furniture Systems Inc. Pension Plan for Salaried Employees (C-12068) - Application by The Marmon Corporation of Canada Ltd.*

THAT, in light of the fact that the application was brought pursuant to the new regulation (s. 8 of Regulation 909, R.R.O. 1990, as amended by O. Reg. 743/91), and in light of the number and percentage of consents obtained from members, former members and other persons and, in light of the fact that all funds from the original profit sharing pension plans had been allocated to the beneficiaries of those profit sharing pension plans, the Commission consent to a payment of surplus to The Marmon Corporation of Canada Ltd. from The Croydon Furniture Systems Inc. Pension Plan for Salaried Employees, Registration Number C-12068, in the amount of \$1,070,370.80 as at November 1, 1990 plus investment earnings thereon to the date of payment, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held April 29, 1993, pursuant to subsection 78(1) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows:

a) ***K-D Manufacturing Company Limited Employees Pension Plan (C-10755)***

Payment of surplus to K-D Manufacturing Company Limited from the K-D Manufacturing Company Limited Employees Pension Plan, Registration Number C-10755, in the amount of \$574,798 as at September 1, 1990 plus investment earnings thereon to the date of payment.

b) ***Pension Plan for Hourly-Paid Employees of Stanton Pipes Limited (C-10658) - Application by British Steel plc (as successor to Stanton Pipes Limited)***

Payment of surplus to British Steel plc (as successor to Stanton Pipes Limited) from the Pension Plan for Hourly-Paid Employees of Stanton Pipes Limited, Registration Number C-10658, in the amount of \$466,900 as at June 30, 1990 plus investment earnings thereon to the date of payment, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held May 27, 1993, pursuant to subsection 78(1) of the Act and Clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus as follows:

a) ***Vasko's Pharmacy Limited Significant Shareholder's Pension Plan (C-100884)***

Payment of surplus to Vasko's Pharmacy Limited from Vasko's Pharmacy Limited Significant Shareholder's Pension Plan, Registration Number C-100884, in the amount of \$158,605 as at March 1, 1992 plus investment earnings thereon to the date of payment.

b) ***Pension Plan for Employees of Blakeslee Foodservice Equipment Inc. (C-14669)***

Payment of surplus to Blakeslee Foodservice Equipment Inc. from the Pension Plan for Employees of Blakeslee Foodservice Equipment Inc., Registration Number C-14669, in the amount of \$111,477 as at December 31, 1989 plus investment earnings thereon to the date of payment, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) ***Staff Pension Plan for Employees of Vacuum Metallizing Limited and P. & D. Holdings Limited (C-15859)***

Payment of surplus to Vacuum Metallizing Limited from the Staff Pension Plan for Employees of Vacuum Metallizing Limited and P. & D. Holdings Limited, Registration Number C-15859, in the amount of \$65,856 as at December 31, 1988 plus \$7,329.47 as at June 15, 1990 in respect of a reversal of prior actuarial fees plus investment earnings thereon to the date of payment.

d) ***Merrill Lynch Canada Inc. Pension Plan Number 14731 (C-100525)***

Payment of surplus to Merrill Lynch Canada Inc. from the Merrill Lynch Canada Inc. Pension Plan Number 14731, Registration Number C-100525, in the amount of \$63,201 as at October 31, 1987 plus investment earnings thereon to the date of payment.

e) ***Revised Pension Plan for Employees of TDF Artists Limited (C-6391)***

Payment of surplus to TDF Artists Limited from the Revised Pension Plan for Employees of TDF Artists Limited, Registration Number

C-6391, in the amount of \$393,799 as at August 31, 1992 plus investment earnings thereon to the date of payment, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Application Approved under section 105 and subsection 78(4) of the Act - Extension of Time and Return of Overpayment

At the Commission meeting held February 25, 1993, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows:

a) ***Slater Industries Inc. Pension Plan for Corporate Employees and Salaried Employees of Hamilton Specialty Bar Division (C-6824)***

THAT the Pension Commission of Ontario consent

1. pursuant to subsection 78(4) of the Act to the refund of an overpayment in the amount of \$529,000 to Slater Industries Inc. from the Slater Industries Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number C-6824.
2. (a) pursuant to section 105 of the Act extend the time limit for filing an application for the refund of an overpayment in the amount of \$322,812; and
(b) pursuant to subsection 78(4) of the Act to the refund of an overpayment in the amount of \$322,812.

Application Approved under Subsection 78(4) of the Act - Return of Employer Payments or Overpayments

At the Commission meeting held March 25, 1993, the Commission consented pursuant to subsection 78(4) of the Act to the following:

a) ***Prudential (Canadian Branch) Life Branch Managers' Pension Plan (C-5858) - Application by The Prudential Assurance Company Limited***

Refund of an overpayment of contributions in the amount of \$25,047 to The Prudential Assurance Company Limited from the Prudential (Canadian Branch) Life Branch Manager's Pension Plan, Registration Number C-5858.

Application Approved under Subsection 63(7) & (8) of the Act - Return of Member Contributions

At the Commission meeting held May 27, 1993, the Commission consented pursuant to subsection 63(7) & (8) of the Act to the refund of member required contributions as follows:

a) ***DuPont Howson Canada Ltd. Employees' Pension Plan (C-16017)***

Refund of members' required contributions from the DuPont Howson Canada Ltd. Employees' Pension Plan, Registration Number C-16017, in the aggregate amount of \$213,613 as at May 1, 1992 plus credited interest thereon to the date of payment.

Pension Benefits Guarantee Fund ("PBGF")

On April 29, 1993, the Commission, pursuant to subsection 34(7) of Regulation 909 under the Act, allocated from the PBGF to be paid to the Pension Agreement Between SunarHauserman Ltd. and The United Steel Workers of America, Local 7657 (Registration No. C-10446), the amount of \$229,877 to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation for the following plan. Any money not required to provide such benefits shall be returned to the PBGF.

a) ***Pension Plan for Bargaining Salaried Employees of SunarHauserman Ltd. re: Pension Agreement Between SunarHauserman Ltd. and The United Steelworkers of America, Local 7657 (C-10446)***

On April 29, 1993, the Commission, pursuant to subsection 90(1) of the Act, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the Act that the PBGF applies to the following pension plan:

a) ***MacLeod-Stedman Inc. Retirement Pension Plan (Manitoba Registration No. C- 7623)***

On May 27, 1993, the Commission, pursuant to subsection 90(1) of the Act, issued a Notice of Proposal to make a Declaration pursuant to section 83 of the Act that the PBGF applies to the following pension plans:

a) ***Pension Plan (A) for Full-Time Salaried Employees Exclusive of Those Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15118)***

b) ***Pension Plan (C) for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15119)***

c) ***The Welles Corporation Limited C.A.W. Pension Plan (C-100807)***

Decisions

IN THE MATTER of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act")

AND IN THE MATTER of a Proposal to Make an Order dated February 28, 1992 by the Superintendent of Pensions for Ontario under Section 69 of the Act in Respect of the Stelco Inc. Retirement Plan for Salaried Employees, Ontario Registration Number C-6968

AND IN THE MATTER of a Hearing in Accordance with Subsection 89(8) of the Act

AMONG:

STELCO INC.

- and -

The SUPERINTENDENT OF PENSIONS

- and -

A GROUP OF PERSONS REPRESENTED BY KOSKIE AND MINSKY ("GOLD GROUP")

- and -

A GROUP OF PERSONS REPRESENTED BY STOCKWOOD, SPIES, ASHBY & CRAIGEN ("CRAIGEN GROUP")

- and -

MR. NEIL K. VEINOT

DECISION

This Hearing held under subsection 89(8) of the Act proceeded in accordance with the directions set out in the preliminary decision of the tribunal as given under date of the 4th day of December 1992.

In accordance with the Notice to members and former members of the Stelco Retirement Plan for Salaried Employees (the "Stelco Plan") dated September 23, 1992 the Hearing was held to decide whether a partial wind up of the Stelco plan is to be ordered in accordance with the Proposal to Make an Order dated February 28, 1992 (the "Proposal") by the Superintendent of Pensions for Ontario (the "Superintendent").

In accordance with our Preliminary Decision of the 4th of December 1992, the Superintendent provided a Summary of the Facts dated the 8th of December 1992 upon which he relied in making the Proposal.

Summary of the Facts Upon Which the Superintendent of Pensions Relied in Making His Proposed Order

1. Stelco amended the plan effective April 1, 1990 to add a new Part VIII to the plan, entitled "Special Provisions in regard to Members whose employment is terminated before normal retirement date as a result of workplace consolidation, the relocation of Toronto Head Office, Burlington Distribution Centre, Brantford Works and Swansea Works and the Closure of Edmonton Finishing Works".
2. Stelco sent a letter to PCO staff dated August 16, 1991 attaching a "spread sheet" entitled "STELCO INC. RETIREMENT PLAN FOR SALARIED EMPLOYEES - Decrease in Members Due to Work Place Consolidation, Retirements and Resignations January 1, 1990 to June 30, 1991".

The "spread sheet" indicated that 645 members of the salaried plan had been terminated due to downsizing (i.e. mandatory retirements and terminations).

3. Representations were made to PCO staff by a number of former employees that the number of plan members whose employment was terminated due to downsizing was greater than Stelco had claimed.

4. A letter dated November 7, 1991 was sent to Mr. Bill Wright, Vice President, Personnel, Stelco Inc. by Nurez Jiwani, Director of Pension Plans, PCO attaching the following:

- (a) the results of the investigation ordered by the Superintendent of Pensions; and,
- (b) a study prepared by PCO staff of partial wind ups carried out since December 1987.

The letter also invited comments and any additional information that Stelco thought should be considered. A similar letter was sent to Murray Gold, legal counsel to a number of former employees.

- 5. The investigation determined that between April 1990 and October 15, 1991 approximately 700 members of the plan ceased to be employed as a result of downsizing at Stelco.
- 6. The investigation also showed that there was a cessation of production at the Edmonton Finishing Works location and the Swansea Works location.
- 7. In a letter to PCO staff dated December 13, 1990 [sic], Jane Treacy, Principal, William M. Mercer stated that "the Company has agreed that we will prepared [sic] partial wind-up reports in respect of Swansea Works and Edmonton Works".
- 8. Counsel to Stelco wrote to the Superintendent on November 27, 1991 and inter alia acknowledged that there were significant reductions in membership at a number of divisions and locations. Counsel also indicated that Stelco was in the process, or would proceed, to partially wind up the plan for the following locations:

Parkdale, Burlington, Frost, Dominion, Brantford, Swansea, Gananoque, Edmonton, Edmonton Finishing Works, and McMaster.

- 9. In a letter to the Superintendent dated January 10, 1992, Counsel to Stelco stated inter alia that the relevant period of review should be from December 1990 to June 1991 since "It was only in this period that a concentrated effort was made to reduce the size of the workforce."
- 10. On January 28, 1992 the Superintendent wrote to Mr. R.J. Milbourne, President and Chief Operating Officer of Stelco Inc. advising that a partial wind up of the pension plan was necessary.

Counsel for Stelco did not dispute the numbers of employees that were terminated (approximately 700) during the period - April 1990 - October 15, 1991 - nor were there serious challenges as to the other items appearing in the Superintendent's Summary of Facts by Stelco counsel.

Most of the evidence and submissions of the parties centred on section 69(1)(d) of the Act which empowers the Superintendent to require the wind up of a pension plan in whole or in part if:

"... a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;"

All parties filed written submissions which we considered and those represented by counsel cited various authorities in support of their respective positions. The authorities cited to us by counsel for the various parties are listed in Appendix "A" to the decision.

Stelco's Position

Counsel for Stelco early in the proceeding stated that the report compiled on behalf of the Superintendent by Mr. Lawrence S. Faulkner, Pension Officer, Pension Commission of Ontario ("PCO"), was accepted as being accurate as regards the numbers of employees involved i.e. members of the Pension Plan as well as numbers of retirees who were offered Part VIII benefits under the Plan during the period under review - April 1990 - October 1991. Stelco, however, contended that there was no reorganization of its operations.

The second major factor in the Stelco position related to the doctrine of legitimate expectations. With respect to this issue, evidence was presented relating to an alleged practice within the PCO for determining whether a "significant number" of members of a pension plan had ceased to be employed by reference to a percentage test. Most of the evidence with respect to this issue came from Michael Banks of William M. Mercer Limited and through cross-examination of the witnesses called by the Superintendent. Stelco contended that the PCO had adopted 20 (or more) as the percentage of membership being terminated which would require a partial wind up of a plan.

Stelco also took the position that the PCO should only consider a decline in Ontario plan membership and that the PCO had no extraterritorial authority beyond the province of Ontario.

In connection with the issue of whether a reorganization within the meaning of section 69(1)(d) had occurred, Stelco produced as their witness Mr. J.A.B. Poos, in-house counsel for Stelco. Mr. Poos testified that reorganization in a business context meant a fundamental change in the legal nature and identity of the corporation such that an individual dealing with the corporation would recognize a change in its identity.

In that connection, Mr. Poos' testimony was that while there were frequent restructurings at Stelco, and consolidation of operations and activities from time to time, these changes were not to be confused with a reorganization. Mr. Poos emphasized that for the purposes of the Act, there could be no reorganization unless the corporate structure was reorganized in a legal sense.

Continuing on the subject of reorganization in addition to the position referred to above that was given by Mr. Poos in his testimony, Stelco cited a variety of authorities. The overall thrust in each instance was that reorganization is associated with the winding up and discontinuance of a business in one form and its continuance in a different form. Reliance by Stelco for that particular position included reference to section 81(1) of the Income Tax Act as it read when considered in *J.E. Kennedy v. M.N.R.*, [1972] CTC 429.

Stelco also produced as a witness Mrs. Renate E. Davidson, Senior Personnel Manager of Stelco. Mrs. Davidson has been employed by Stelco for many years and has held her present position since 1989. It was found however in cross examination that there were many areas of the Stelco operations where Mrs. Davidson had very limited knowledge and in areas where in-depth knowledge would have been helpful to the Tribunal.

Stelco's position regarding reorganization in the context of section 69(1)(d) was that, as there was no reorganization of its company, there is no jurisdiction to require a partial wind up. Stelco further urged that even if the Tribunal found that a reorganization had occurred, it would still be necessary to determine the extent to which employee terminations were a result of such reorganization.

In this regard, Stelco argued that even if it were found that a reorganization had taken place - although it strongly contended that a reorganization had not taken place - it must also be shown that the reorganization resulted in the termination of employment of a significant number of plan members.

Stelco also contended that both the time period cited by the Superintendent in the Proposal, namely, i.e. January 1, 1990 to October 15, 1991 was not proper nor was the geographical extent proper, because it included Stelco work locations outside Ontario. Stelco maintained that the appropriate time period to be considered was the approximate three month period, November 1990 through January 1991, which followed a serious labour strike and that the geographical frame of reference should be restricted to the province of Ontario. The position taken by Stelco was that while the tribunal can legitimately look at actions that have been taken outside of Ontario, it can only provide remedies within Ontario. Authorities cited included that of *Regina v. Thomas Equipment*, [1979] 2 S.C.R. 529 and *Gray v. Kerslake* (1957), [1958] S.C.R. 3.

Stelco also asserted that, while there is (was) a Reciprocal Agreement relating to pension matters signed by several Canadian jurisdictions, such agreement lapsed in 1970. In addition, even if an agreement were entered into by several provincial governments with Ontario, it is not within their constitutional competence to give authority to the PCO to apply the law of Ontario outside of Ontario. Stelco stated that, based on the limitation that Ontario legislation can apply within Ontario, only approximately 576 members (14% of the total) out of a total workforce of 3996 would have been affected. If it were also accepted that only the reduced period of time applied, namely November 1990 to January 1991, the number of employees involved would be further reduced from the approximately 576 mentioned above to 416 or approximately 10% of total plan membership.

Stelco also addressed the issue of what constitutes a "significant number" within the meaning of section 69(1)(d). Stelco argued that it had a legitimate expectation that a partial wind up would not be required unless 20% or more of its Plan's membership was involuntarily terminated and that the word "significant" in the context of section 69(1)(d) must be interpreted as meaning 20% or more of a plan's membership. Stelco therefore took the position that given all these circumstances it is inappropriate to order a partial wind up with respect to terminated employees at all locations.

Stelco further argued that even if the Tribunal found that section 69(1)(d) otherwise applied, a key word in the preamble to subsection 69(1) of the Act is “may” and that neither the Superintendent nor the Tribunal is required to order a wind up. In short, there is a discretion not to order a wind up even where all the criteria set out in section 69(1)(d) are satisfied.

Stelco, in addition, pointed out the responsibility of the PCO under subsection 96(b) of the Act “to promote the establishment, extension and improvement of pension plans throughout Ontario”. In that connection, Stelco maintained that the PCO should avoid decisions, orders and administration strategies that would have the opposite result and which would discourage and be detrimental to the PCO’s duty under subsection 96(b).

Craigien Group’s Position

In all areas the Craigien Group’s position was very similar to the position taken by Stelco. The Craigien Group’s particular concern was that any additional benefits that would accrue to the terminated employees from a partial wind up of the plan could reduce the benefit security and potential for future benefits for those members of the plan that they represented. The Craigien Group did not produce witnesses or other evidence which proved that their interests would be detrimentally affected by a partial wind up.

Superintendent’s Position

The Superintendent called as witnesses Larry Falconer and Nurez Jiwani, employees of the PCO, who testified with respect to the Superintendent’s investigation. Their evidence included an affidavit of Larry Falconer who was subject to cross-examination thereon.

Mr. Jiwani testified that 20% was a guideline which among other factors prompted further investigation to determine if a partial wind up should be considered. Counsel for the Superintendent in addressing the matter of the duty of the Commission under section 96 noted that while subsection 96(b) requires the PCO “to promote the establishment, extension and improvement of pension plans throughout Ontario;” - subsection 96(a) requires it “to administer this Act and the regulations;”.

In argument, counsel for the Superintendent pointed out that section 69(1)(d) refers to a “significant number of members of the pension plan” and not to a “significant percentage” and that a 20% reduction in plan membership is not an established rule or a threshold figure requiring partial wind up.

On the subject of restructuring, the Superintendent took the position that the Act relates to employees and to pension benefits and that it is not an Act relating to corporate restructuring. The Superintendent’s argument was that, while Stelco did not “reorganize” its corporate structure, it had “reorganized” the manner in which it carries on its business.

The Gold Group’s Position

The Gold Group emphasized the relevance to this Hearing of the Court of Appeal’s judgment in the Firestone Canada v. Pension Commission of Ontario et al. (1990), 1 O.R. (3d) 122, (C.A.) and pointed out that the Act is minimum standards legislation which is intended for the benefit of pension plan members and not anyone else. Like the Superintendent, the Gold Group argued that the corporate law meaning of the term “reorganization” had no relevance to the Act. As regards to the alleged 20% threshold, the Gold Group argued that the percentage test is not rational bearing in mind that if it were applied in all instances it could result in large numbers of members of large plans being terminated without protection yet small numbers in small plans would receive protection. The Gold Group stated that by any definition the approximately 700 involuntary cessations of employment represented a significant number.

Neil Veinot’s Position

Following our interim decision dated March 18, 1993 that we would not consider in this Hearing whether a partial wind up should be ordered in respect of an earlier time period which had never been investigated by the Superintendent, Mr. Veinot essentially restricted himself to supporting the Gold Group’s position.

Tribunal's Findings

Reorganization

We find that, while there was not a reorganization by Stelco as that term might be interpreted in a corporate law or income tax law context, Stelco was in fact reorganizing its business in an effort to meet the various business challenges with which it was faced during the period cited in the Superintendent's Proposal. The reasons given by Stelco in letters to various affected employees for terminating the employment of the approximately 700 persons included "downsizing", "restructuring" and "consolidation" which reasons, particularly when considered in total, was a form of reorganization. We were not persuaded that the intent of 69(1)(d) of the Act was that of a reorganization within the technical meaning that the term might be given in a statute dealing with corporate law like the Ontario Business Corporations Act. If in fact it was the intent of the Act to consider only a reorganization in that sense of the term, it would have been included as a separate clause within subsection 69(1) like section 69(1)(c) and would have read something like "the employer reorganizes under the Ontario Business Corporations Act, the Canada Business Corporations Act or other applicable statute".

Further, it is clear that the term "reorganization" standing alone has no precise legal meaning. Its meaning in most instances will depend on the statutory context in which it is used. In that regard we refer to Hooper v. Western Counties and South Wales Telephone Company Limited (1893), 68 L.T. 78 (Ch. Div.) where Chitty J. stated at p. 80:

"Does that transaction fall within the words 'reorganization' or 'reconstruction' in the fourth condition? The words in question are not words of art. They have no technical meaning in law.
..."

We placed considerable weight on the use of the term "reorganization" in Stelco's annual report for 1990. The preparation of an annual report for a large publicly traded company can be expected to have been very carefully prepared by several persons having expertise and experience. We believe the content of that report would receive very careful scrutiny before it was signed by the corporation's Chairman. We quote as follows from that report at p. 8:

"At Stelco, we are reorganizing plants along business or process lines. Under this particular organizational concept, which involves a radical departure from conventional ways of thinking and working, managerial, supervisory technical and other staff groups forego their traditional role as directors, controllers or overseers of other peoples work and instead function as a resource and providers of specialized services to the individuals who actually make and sell our steel. In addition to fostering improvements in operational, quality and customer service performance, this approach, by eliminating the increasingly artificial and irrelevant distinction between line and staff functions, also discourages the creation and maintenance of costly staff bureaucracies."

We feel strongly that the Act's intent and thrust is primarily to protect the interests of plan members. A corporate law interpretation of the term "reorganization" might be appropriate if the object of the Act were to protect the rights of creditors and shareholders. In our view, however, those were not the interests that the Act in general or section 69(1)(d) in particular were enacted to protect. Section 69(1)(d), when applicable triggers the enhanced pension rights provided for under section 74, and may trigger increased employer funding obligations under section 75. In enacting section 69(1)(d) the Legislature was concerned about protecting older employees with appreciable amounts of service who involuntarily lose their employment as a result of a major change in the way in which their employer carries on its business. It is from that perspective that the term "reorganization" must be interpreted. In our view, on the facts here, there was a "reorganization" of Stelco's business within the meaning of section 69(1)(d) which caused the cessation of employment of approximately 700 employees.

In that regard, that is how Stelco itself described what it was doing in its 1990 annual report. The reorganization included the closure of Stelco's Swansea Works in Toronto, the Fastener Distribution Centre in Burlington, the old Brantford facility in Brantford, and the Edmonton Finishing Works in Alberta. Effective April 1, 1990, Stelco amended its Plan. These amendments included a new Part VIII containing section 32 which was described by the Plan itself as "Special Provisions in regard to Members whose employment is terminated before normal retirement date as a result of workplace consolidation, the relocation of Toronto Head Office, Burlington Distribution Centre, Brantford Works and Swansea Works and the Closure of Edmonton Finishing Works".

Significant Number of Members of the Pension Plan

We turn next to the approximately 700 members of the Plan whose employment was terminated or who were mandatorily retired. We cannot see how 700 persons can be considered other than a significant number. We were not persuaded by the references to 20% as being a threshold below which percentage an employer could expect to continue without a partial wind up of the Plan. If the Legislature had intended that section 69(1)(d) only apply where 20% or more of a Plan's membership lost their employment, it would have used express language to that effect. In contrast, the use of the term "significant" implies a more general and flexible standard and the need to consider the particular circumstances of each case on its merits.

In our view the termination of 700 members out of a total of 3996 during a 18-month period must be considered a significant number by virtually any reasonable standard. In our view in characterizing this as "significant", it is also relevant to consider that many of those terminated were older, long service employees whom section 69(1)(d) was enacted to protect.

It will be noted that we continue to refer to the number of 700 as we are of the opinion that regardless of where in this Nation that the Stelco Plan members were employed, their terminations reflected what was occurring within Stelco's organization both within and outside Ontario. We see no constitutional impediment to our taking account of facts occurring outside of Ontario in exercising our undoubted jurisdiction over a pension plan that is registered in Ontario and which applies to a substantial number of Ontario employees who make up the overwhelming majority of the membership of the Plan (see section 3 of the Act). Further, if a pension plan is registered in Ontario and in no other province or territory and if it is administered from Ontario as we understand to be the case in respect of the Stelco Plan, we are of the view that we have authority to order its partial wind up in respect of terminated members wherever located or employed in Canada. This is the only "remedial" order affecting persons both inside and outside of Ontario that we are making in this proceeding.

Exercise of Discretion

Finally in determining whether to exercise our discretion under subsection 69(1) having found that the requirements for the application of section 69(1)(d) are satisfied, we see nothing in the evidence which would cause us not to order a partial wind up. A reorganization in Stelco's business has led to the termination of a large number of employees, many of whom will benefit from the operation of section 74 which will be triggered by a partial wind-up order. Accordingly, this is a situation where it is appropriate to order a partial wind up.

Time Period Affected by the Proposal

Also, we have determined not to vary the time period from that cited in the Proposal. While consideration was given to extending the time period beyond October 15, 1991, we did not hear evidence relating to the period beyond that date although quite possibly other members were adversely affected by the reorganization after the October 15, 1991 date.

Doctrine of Legitimate Expectations

We were not persuaded that this doctrine applies in this case assuming that it is a valid principle of administrative law in Canada. There was no clear pattern where the Superintendent had consistently used a certain percentage or number of plan members being terminated for requiring a partial wind up. Further, there is no credible evidence that the decision makers at Stelco who determined that these terminations were necessary took the alleged 20% rule into account in either deciding to carry out these terminations or in structuring the termination packages that were offered to these employees. Finally, we doubt the application of this principle where to do so would negate the effect of the clear words of a statute to the detriment of third parties who played no role in creating the expectation. The third parties to whom we refer in this case, of course, are the plan members who were terminated.

For these reasons the Commission orders the Superintendent to carry out the Proposed Order dated February 28, 1992 directed to Stelco Inc.

DATED AT TORONTO, this 7th Day of July, 1993

M. Joseph Regan, Chairman, M. David R. Brown, Donald G. Collins

APPENDIX "A"

AUTHORITIES CITED TO THE PENSION COMMISSION OF ONTARIO BY COUNSEL FOR THE VARIOUS PARTIES

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- H.T.V. Ltd. v. Price Commission, [1976] 1 C.R. 170 (C.A.)
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AUTHORITIES CITED BY THE GOLD GROUP

Bathgate v. NHL (Unreported decision of Ontario Court of Justice, released October 21, 1992)

Firestone Canada Inc. v. Pension Commission of Ontario, *supra*

Re Imperial Oil Limited and Atlantic Refinery & Marketing Employees' Association, and Department of the Attorney General, unreported decision dated December 8, 1992 (Fleet)

IN THE MATTER of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act")

AND IN THE MATTER of a Proposal to Make an Order dated February 28, 1992 by the Superintendent of Pensions for Ontario under Section 69 of the Act in Respect of the Stelco Inc. Retirement Plan for Salaried Employees, Ontario Registration Number C-6968

AND IN THE MATTER of a Hearing in Accordance with Subsection 89(8) of the Act

AMONG:

STELCO INC.

- and -

The SUPERINTENDENT OF PENSIONS

- and -

A GROUP OF PERSONS REPRESENTED BY KOSKIE AND MINSKY ("GOLD GROUP")

- and -

A GROUP OF PERSONS REPRESENTED BY STOCKWOOD, SPIES, ASHBY & CRAIGEN ("CRAIGEN GROUP")

- and -

MR. NEIL K. VEINOT

DECISION RELATING TO NEIL K. VEINOT

On January 19, 1993, we gave an oral decision with respect to the scope of the matters properly before the Commission in this Hearing as a result of a position taken by Mr. Veinot. At that time we stated that we would provide written reasons. These are the reasons for that decision.

Mr. Veinot's position related to his having been an employee of Stelco Inc. ("Stelco") and a member of the Stelco Inc. Retirement Plan for Salaried Employees (C-6968) (the "Plan"). By Mr. Veinot's submission of December 30, 1992, he was a member of the Major Projects Group a separate division of Stelco Inc. that provided engineering/project management services for all major capital and maintenance projects within Stelco. Mr. Veinot maintained that as a result of a significant decrease in capital projects, Stelco terminated by direct termination and mandatory retirements approximately 20% of its personnel from the Major Projects Group in 1988.

Mr. Veinot maintains that subsequent downsizing was simply a continuation of the phasing out of the Major Projects Group started in 1988. Mr. Veinot has stated that his termination date from Stelco was March 31, 1988 after 16.83 years of service and at which time he was a few months short of forty years of age. His position that he should qualify for a deferred pension is based on the foregoing and that his termination was part of a re-organization which ultimately led to the elimination of Stelco's Major Projects Group in 1989-90.

On January 19, 1993, Mr. Veinot, who was not represented by counsel at the Hearing, cross-examined Mrs. Renate Edeltraud Davidson, a Stelco witness, who has held the position of senior personnel manager at Stelco since 1989 and a person who is a long term employee with Stelco having held various positions in that company's personnel area.

In Mr. Veinot's cross-examination of Mrs. Davidson he tried to obtain a better picture of the circumstances, conditions, terms, history, number of employees, etc., presumably related to the function of the Major Projects Group of Stelco from which he was terminated in 1988. The witness was unable to provide indepth information that Mr. Veinot requested to strengthen his case. Mr. Veinot expressed the position that his case could only be proved by Stelco complying with his request to provide information from its files relating to the matters he had raised. Counsel for Stelco held to his position that the only way open to Mr. Veinot to obtain the additional information being requested would be by way of summons and further that the evidence that would be sought by such a summons was not relevant to the issues properly before the Commission. Stelco's counsel pointed out that the time frame involved in the Hearing was determined by the period to which the Superintendent's Notice of Proposal refers. Counsel for the Superintendent as well as counsel for the "Craigien Group" took similar positions to that of counsel for Stelco, with counsel for the "Gold Group" not expressing a view on this matter.

We provided our oral decision at this point in the Hearing by stating that we were not prepared to hear evidence relating to the disbanding of the Major Projects Group prior to 1990 because we did not recognize it as a proper matter to be dealt with in this Hearing. Mr. Veinot's right to take other steps to address his situation was recognized. Accordingly, Mr. Veinot was informed that the Commission was not prepared to issue a summons but that he continued to have standing to deal with matters properly before the Commission.

This Hearing has been held because the Superintendent proposed to order a partial wind up of the Plan under subsection 69(1) of the Act and Stelco required a hearing under subsection 89(8). In such a matter the scheme of the Act is as outlined in section 69 and subsections 89(5), (6), (7), (8), (9) and (11). Section 69 contemplates that as the first step the Superintendent in accordance with the duty of fairness will conduct an inquiry or investigation into whether a wind up of the pension plan in issue is warranted by reason of the existence of any of the circumstances set out in subsection 69(1). If the Superintendent concludes that any such circumstances exist, he may order that the pension plan be wound up in whole or in part. If, on the other hand, the Superintendent concludes that none of the circumstances described in subsection 69(1) exist, he must not order a wind up because the statutory pre-conditions for the exercise of his power are absent. Where the Superintendent determines that a wind-up order is appropriate, he must serve a Notice of the Proposed Order together with his written reasons as required by subsection 89(5). A person served with a Notice under subsection 89(5) may then require a hearing before the Commission.

Under subsection 89(9), when a hearing is required, the Commission has the power to order the Superintendent either to carry out or refrain from carrying out the proposed order and may substitute its opinion for that of the Superintendent.

This statutory scheme clearly contemplates that the Superintendent will inquire into a possible wind up before the Commission holds a hearing into the matter. Indeed, if the Superintendent declines to make an order, there will be no hearing. In short, the Superintendent must inquire into the matter before it comes before the Commission.

With respect to Mr. Veinot's contention that the proposed wind-up order should be made effective as of a date in 1988 thereby benefiting persons such as himself who were terminated as a result of the alleged disbanding of the Major Products Group, which he maintains began in 1988, this preliminary inquiry by the Superintendent has not occurred.

Accordingly, we were persuaded that it was not a proper use of this Hearing to embark on an investigation of first instance where the Superintendent had not had the opportunity or occasion to conduct his preliminary inquiry so that he might determine whether or not a wind-up order was appropriate which is a pre-condition to the holding of a hearing by the Commission.

In our view, this two-step procedure, whereby the Superintendent's inquiry precedes the Hearing before the Commission, promotes the good administration of the Act and is fair to all affected parties. An employer or administrator ought not to be forced to undergo the time and expense of a hearing in respect of a proposed wind-up order unless the Superintendent has concluded that one or more of the circumstances set out in subsection 69(1) of the Act exist. On the other hand, if a hearing is held following an inquiry which has led the Superintendent to conclude that one or more of the circumstances set out in subsection 69(1) exist, the Superintendent will be better equipped to adduce relevant evidence at the Hearing which will increase the likelihood of all relevant facts being put before the Commission. This, in particular, will contribute to the protection of the interests of persons like Mr. Veinot who are unrepresented by counsel at hearings before the Commission.

While not raised at the Hearing, we feel we should comment as to Mr. Veinot having been given standing and then the Commission declining to permit the expansion of the time parameters of the proposed wind-up order to include the period during which Mr. Veinot and others were purportedly terminated by Stelco. In granting standing to Mr. Veinot, the Commission wished to ensure that he had the opportunity both to present his full argument and to protect his interests as a former member of the Plan to the extent that they might be affected by our disposition of the Superintendent's Notice of Proposal. In declining Mr. Veinot's request for a summons and recognizing Mr. Veinot's right to take other steps to address his situation, we did not overlook the possibility of Mr. Veinot approaching the Superintendent in an endeavour to have his situation addressed in accordance with the scheme of the Act.

DATED AT TORONTO, this 18th Day of March, 1993

M. Joseph Regan, Chairman, M. David R. Brown, Donald G. Collins

Contacts For PCO Enquiries

Actuarial Services	Teck Go	314-0558
Annual Information Return Filing Fees	George Ha	314-0676
Communications	Judith Chalmers	314-0699
Forms	Nellie Halton	314-0642
Freedom of Information Requests	Margaret Dougherty	314-0697
General Inquiries		314-0660
Issues and Correspondence	Margaret Dougherty	314-0697
Mailing List	Linda Stangl	314-0694
Pension Benefits Guarantee Fund Assessment (General)	Rick Kennedy	314-0616
Pension Benefits Guarantee Fund Assessment (Payment)	Gina Potter	314-0672
Policy Issues	Susan Ellis	314-0703
	Cynthia James	314-0702
(Bilingual)	Jules Huot	314-0613
Registrar/Secretary to the Commission	Mary Crocker	314-0624

Contacts For Plan Related Enquiries

1. SECTOR ALLOCATIONS – (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining, Construction, Finance...	Rosemine Jiwa-Jutha	314-0611	Alain Malaket	314-0609
Trade, Commercial, Public Administration	Larry Falconer	314-0610	Penny McIlraith	314-0594
Food, Beverages, Textiles, Paper...	Jaan Pringi	314-0586	Sandy Malloy	314-0636
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Mark Eagles	314-0599
Printing, Primary Metals, Machinery...	Mark Henry	314-0584	Doug Kaye	314-0605
Electrical, Non-Metallic, Chemicals...	David Kearney	314-0590	Elizabeth Addo	314-0607

2. ALPHABETICAL ALLOCATIONS – Defined Benefit & Multi-Employer Plans (Plans with fewer than 250 members)

Alpha Range	Pension Officer		Alternate	
A -BRI	David Allan	314-0612	Claude De Souza	314-0608
BRO -COM	Steve Young	314-0646	Doug Kaye	314-0605
CON -EZZ	**		Claude De Souza	314-0608
F -HAZ	Larry Murray	314-0644	Merle Corbie	314-0637
HEA -KMZ	William Qualtrough	314-0641	Lynn Barron	314-0639
KNA -MOQ	Elizabeth Carter	314-0604	Wynnell De Landro	314-0603
MOR -PNZ	Stanley Chan	314-0635	John Staric	314-0596
POL -SHE	Maureen Barber	314-0645	Lynn Barron	314-0639
SHI -TORO	Daphne Ludgate	314-0592	Margaret Fennell	314-0600
TORR *	John Graham	314-0647	John Staric	314-0596

* Companies with alpha-numeric names.

**Position vacant - interim contact: Wynnell De Landro 314-0603

3. ALPHABETICAL ALLOCATIONS – Defined Contributions Plans

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BAY	-Canada	Doug Kaye	314-0605	Steve Young	314-0646
Canadian-COK		Margaret Fennell	314-0600	Daphne Ludgate	314-0592
COL	-DIL	Claude De Souza	314-0608	David Allan	314-0612
DIM	-FLO	Elizabeth Addo	314-0607	David Kearney	314-0590
FLU	-HAL	Alain Malaket	314-0609	Rosemine Jiwa-Jutha	314-0611
HAM	-JAL	Merle Corbie	314-0637	Larry Murray	314-0644
JAM	-LEU	Wynnell De Landro	314-0603	Elizabeth Carter	314-0604
LEV	-MIL	Penny McIlraith	314-0594	Larry Falconer	314-0610
MIN	-ONT	Claude De Souza	314-0608	David Allan	314-0612
ONU	-RAL	Lynn Barron	314-0639	Maureen Barber	314-0645
RAM	-SHA	John Staric	314-0596	Stanley Chan	314-0635
SHE	-THA	Merle Corbie	314-0637	Larry Murray	314-0644
THE	-VUL	Lynn Barron	314-0639	William Qualtrough	314-0641
VUM	*	Mark Eagles	314-0599	Larry Martello	314-0587

4. ALPHABETICAL ALLOCATIONS – Pension Plans of Insolvent Companies

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F	-P	Robin Gray	314-0593
Q	*	Lawrence Contant	314-0602

* Companies with alpha-numeric names.

The PCO Bulletin is published by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 314-0660 fax (416) 314-0650

Mailing List Review

We need your help in maintaining an accurate PCO Bulletin Mailing List. Please inform us of any change that may affect efficient and economical delivery of the Bulletin to you or your company. Affix the pressure sensitive mailing label to your letterhead, make note of the necessary correction or revision, indicate whether you are the plan sponsor, administrator, agent, consultant or "other" and forward it to the Communications Officer by mail or by fax (as noted above). Thank you for your assistance.

* * *

The material in the Pension Commission of Ontario Bulletin (the "PCO Bulletin") published by the PCO and/or made available by the PCO on the Bulletin Board System (operated by Canada Remote Systems), (the "System") has been prepared by the PCO to provide general information about pension matters to the public.

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

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THE PENSION COMMISSION OF ONTARIO

BULLETIN

December 1993 - January, 1994

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Mailing List Update - Fast Fax Your Personnel or Address Changes to 416-314-0650

We continue to need your help in maintaining an accurate *PCO Bulletin* Mailing List. Please inform us of any change that may affect efficient and economical delivery of the *PCO Bulletin*. When making notification of a change, we ask that you include all information from the *PCO Bulletin* mailing label on your letterhead and note the correction or revision. Identify whether you are the plan sponsor, administrator, consultant etc. Then forward the information to Communications - *Mailing List Update* by mail or by fax (as noted above). Thank you for your assistance.

* * *

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ISSN 1180-1565

Pension Plan Membership in Ontario

by Karen Maser, Chief - Pensions Section
Statistics Canada

At the beginning of 1992, over 47% of the paid workforce in Ontario belonged to registered (i.e. employer-sponsored) pension plans (RPPs). This is up from a 44.5% coverage rate two years earlier. (These rates are virtually identical to those for Canada.) The improvement in coverage is, however, due not so much to an increase in the number of members as to a drop in the number of men in the paid workforce.

This information comes from data recently released by the Pensions Section of Statistics Canada. Some of the highlights of the information available are presented here.

Ontario Plan Members

(Includes Ontario employees belonging to all RPPs, not just those registered with the PCO)

Membership

Ontario workers belonging to registered pension plans numbered 2,074,518 at the beginning of 1992, an increase

of 2% from 1990. At the same time, the number of paid workers in the province dropped by 4% to 4.4 million. It is because of this drop in the paid workforce that the coverage rate rose.

Ontario plan members accounted for close to 40% of the 5,318,090 pension plan participants in Canada in 1992. The 2% increase in the number of Ontario members compares to a growth of 4% for the country as a whole.

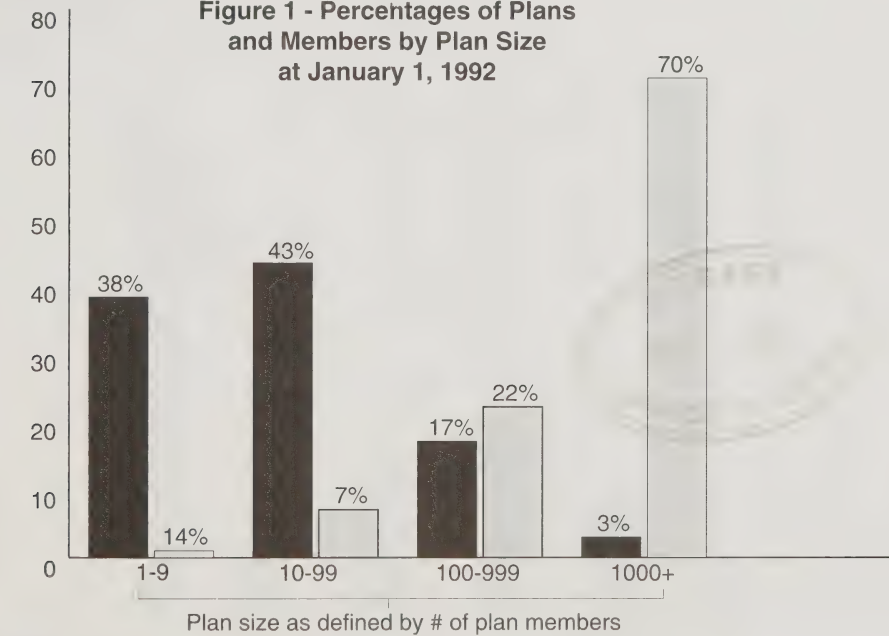
Of the 2,074,518 Ontario plan participants, 60% belonged to private sector plans; the remaining 40% worked in the public sector. In fact, 45% of Canada's private sector RPP members worked in Ontario relative to only 32% of all public sector participants.

Membership Change 1982 - 1992

The number of employees in RPPs in Ontario rose almost 16% from January 1 of 1982 to 1992. (For Canada, the increase was slightly lower, 14%.) Virtually the entire growth was due to the increase in the number of females participating in pension plans; their numbers rose 44% while the number of men participating was up only 2%. As a result, women now account for 40% of all Ontario members, up from 32% in 1982. (See Table 1 on the next page.)

Percentage

Figure 1 - Percentages of Plans
and Members by Plan Size
at January 1, 1992



Plans registered with PCO
Total plans = 9,239



Members of Ontario - registered pension plans
Total members = 1,950,438

Table 1 - Ontario employees participating in RPPs

Year	Total	Males	Females
1982	1,793,950	1,271,960	575,990
1984	1,786,755	1,189,864	596,891
1986	1,836,988	1,208,566	628,422
1988	1,915,125	1,241,644	673,481
1990	2,031,356	1,272,138	759,218
1992	2,074,518	1,244,856	829,662

Plan Size

Over 80% of the 9,239 plans had under 100 participants; these plans, however, covered just 8% of the members in all plans registered with the PCO. Although the larger plans (those with 1,000 members or more) accounted for less than 3% of all plans, 70% of the total number of plan members belonged to these plans. (See Figure 1 on page 3.)

Where Members of PCO Plans are Employed

As of January 1, 1992 plans registered with the PCO covered 1,950,438 members; 85% of these people were employed in Ontario, the rest in other parts of the country. (See Table 2 below.)

Plans Registered with the PCO

Number of Registered Plans

Over 50% of the 18,028 RPPs in Canada at January 1, 1992 were registered with the PCO. The number of Ontario plans was as high as 9,849 at the beginning of 1988 but dropped to 9,239 as of January 1, 1992. (More current data from the PCO indicate that there has been a significant decrease in plans since 1992, to 7,777 as of September 30, 1993. [There are two reasons for these differences in the number of plans. First, Statistics Canada considers a plan active until it has been terminated; whereas, Ontario considers a plan terminated once the PCO has been formally advised that a wind up is planned. Second, the two dates differ: January 1, 1992 vs. September 30, 1993.]).

Table 2 - Place of employment of members of PCO plans, January 1, 1992

Place of Employment	# Members	% of Total
Newfoundland	8,130	0.4
P.E.I.	1,221	0.1
Nova Scotia	16,595	0.9
New Brunswick	18,492	0.9
Quebec	108,158	5.5
Ontario	1,662,010	85.2
Manitoba	20,195	1.0
Saskatchewan	11,990	0.6
Alberta	46,937	2.4
British Columbia	44,548	2.3
Other	12,162	0.6
Total	1,950,438	100.00

Percentage of PCO -
Registered Plans

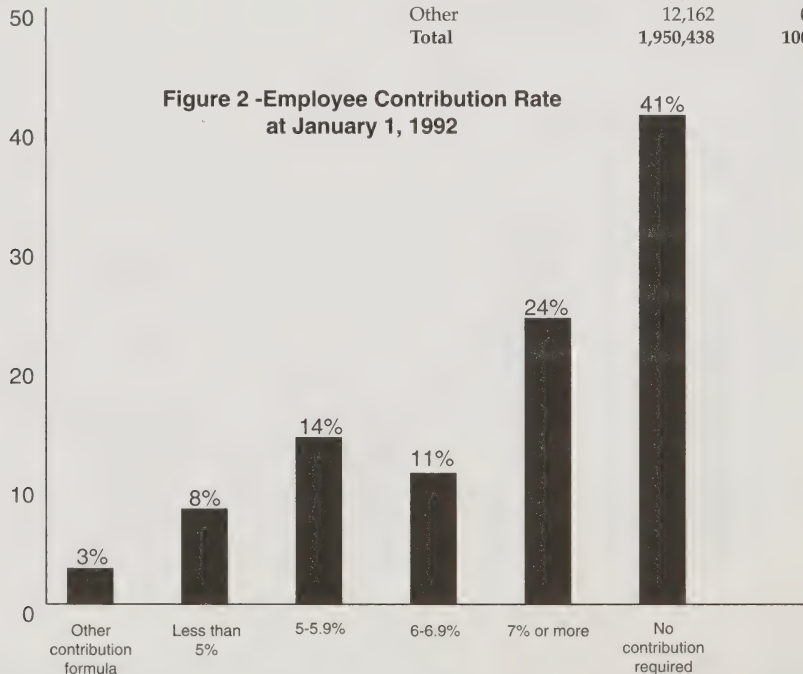


Figure 2 - Employee Contribution Rate at January 1, 1992

Percentage of Earnings Contributed

Type of Benefit Provided

Half of the plans registered with the PCO at the beginning of 1992 were defined benefit plans. They covered a very large majority of members (almost 90%). Defined contribution plans accounted for the other half of the plans but only 10% of the membership belonged to these plans.

From 1988 to 1992, the number of defined benefit plans registered with the PCO increased slightly from 4,522 to 4,599 while the number of defined contribution plans decreased from 5,189 to 4,507.

Employee Contribution Rate

Over 40% of the members of PCO registered plans belonged to non-contributory plans. Of those who were required to contribute, the largest proportion contributed at least 7% of their earnings. (See Figure 2 on page 4.)

Benefit Rate

Almost 45% of members will receive a benefit equivalent to 2% (or more in a few cases) of the amount they earned over a specified period of time. For further detail on benefit rate, consult Figure 3 below.

Additional information on registered pension plans, either for Ontario members or other members employed in Canada, is available from the Pensions Section of Statistics Canada. Contact either Johanne Pineau (613-951-4034) or Tom Dufour (613-951-2088).

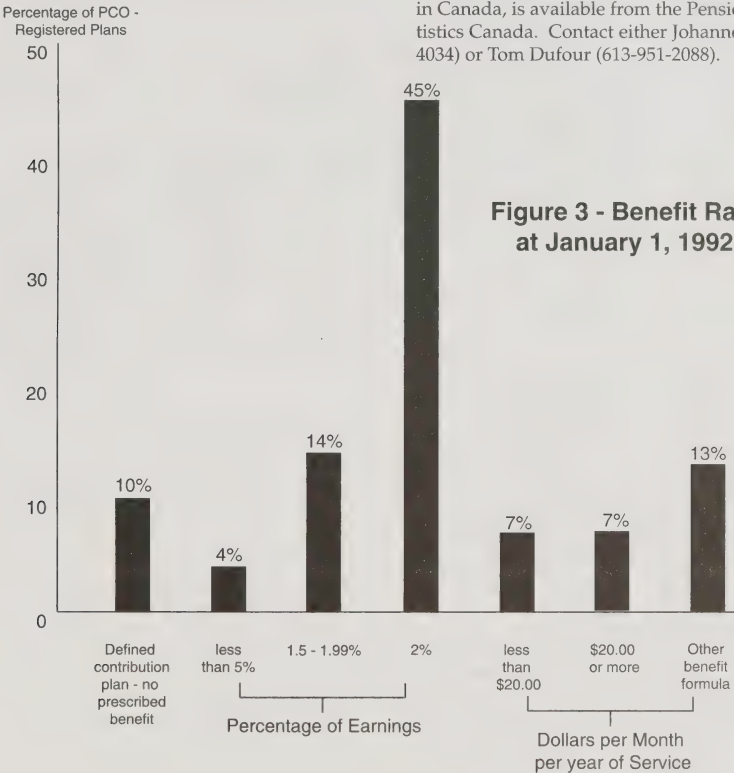


Figure 3 - Benefit Rate at January 1, 1992

A notice appeared in the October 13 edition of the *Statistics Canada Daily*, announcing the release of the "Pension Plans in Canada" data for 1/1/92. The release attracted media coverage which focused on the decline in the number of plans rather than on the number of members covered which, in our view, is a more meaningful measure.

We asked Karen Maser, Chief, Pensions Section at Stats Canada, to summarize the key data about Ontario plans and Ontario members and share the information with our readers. We thank Ms. Maser for her co-operation.

The Pensions Section is responsible for the collection and dissemination of statistics on employer pension plans in Canada. Information is available on the provisions and membership of these plans and on the financial holdings and investment profile of trusted pension funds.

Ms. Maser has been with Statistics Canada since 1977. She is a graduate of Queen's University and earned a M.S.W. from Carleton University. Her specialization was in administrative research methods and policy analysis.

Announcements

Actuarial Assumptions Guidelines - Solvency Valuations

In the first issue of the *PCO Bulletin* (February 1990) we published an article on actuarial assumptions that would be accepted by PCO staff (page 8).

For solvency valuations, there were two options for economic assumptions. The second option included an interest assumption for 20 years based on long-term provincial securities and an expense assumption of \$500 per member.

In recognition of changes in the financial markets and the solvency valuation requirements, the second option is no longer available. For valuation dates in or after December 1993, PCO staff will no longer be able to accept solvency valuations based on the second option for economic assumptions.

New Commission Chair to be Appointed

The term of office for Chair, M. Joseph Regan, expired on December 31, 1993. Mr. Regan was appointed on May 1, 1990. His successor has not yet been named.

Eileen E. Gillese, Vice-chair, will be the Acting Chair of the Commission until the new Chair is named.

Deadlines for the Submission of Applications to the Commission

Those making submissions for consideration by the Commission at its monthly meetings should be aware that deadlines for submitting applications to staff have been established. These deadlines are to ensure that staff and Commission members have adequate time to review applications prior to the meetings.

Although applications will be dealt with as quickly as possible by staff after receipt, it is not possible to ensure that applications will be considered by the Commission if they do not conform to the deadlines indicated on this page. Delays will likely result if applications are not complete when reviewed by staff.

Commission Meeting Dates

Thurs., April 28, 1994
Thurs., May 26, 1994
Thurs., June 23, 1994
Thurs., July 21, 1994
Thurs., Aug. 25, 1994
Thurs., Sept. 22, 1994
Thurs., Oct. 20, 1994
Thurs., Nov. 17, 1994
Thurs., Dec. 15, 1994

Submission Deadline

Wed., Jan. 26, 1994
Wed., Feb. 26, 1994
Wed., March 23, 1994
Wed., April 20, 1994
Wed., May 25, 1994
Wed., June 22, 1994
Wed., July 20, 1994
Wed., Aug. 24, 1994
Wed., Sept. 21, 1994

Future dates will be published in subsequent issues of the *PCO Bulletin*.

PCO Participates in Pension Conference

A one-day conference, on *Pension Policy and Regulation in Ontario: Current Issues and Future Directions* and organized by Lexium Educational Services, was held in Toronto on September 13.

Eighteen speakers from across Canada and drawn from the pension industry, regulatory agencies and government spoke on a variety of pension topics. Attendee feedback indicated a high level of interest in topics such as surplus, regulatory duplication and conflicts in federal-provincial rules. The keynote address was given by Ross Peebles, Superintendent of Pensions.

Mailing List Review and Cost Saving Measures

We want to thank all readers of the *PCO Bulletin* who responded to the Mailing List Review notice in the March and August issues. This exercise has enabled us to reduce our distribution list by 40 per cent to approximately 5,500 readers with a corresponding reduction in production and distribution costs.

We have reformatted this issue of the *PCO Bulletin* for additional cost savings. The actual size of the publication has been reduced slightly; it is still punched for filing in a standard three ring binder.

By reducing the page size we are able to take advantage of a more efficient printing process. This and other production cost savings amount to about 25 per cent.

Transfer of Commuted Value on Termination Outside Canada

The Pension Benefits Act provides three portability options to former pension plan members who terminate employment before the normal retirement age. The portability options set out in section 42 are: (a) transferring the commuted value of a pension benefit to another pension plan willing to accept the funds; (b) transferring the commuted value to a prescribed retirement savings arrangement, such as a locked-in RRSP or a Life Income Fund; or (c) purchase of a deferred life annuity. PCO staff have received several enquiries seeking clarification of the responsibilities of a pension plan administrator in instances where individuals seek to transfer the commuted value of their deferred pension to a pension fund or financial institution located outside of Canada.

A plan administrator must comply with a former member's direction as to the portability option selected within 30 days of receipt of the direction, subject to meeting the requirements of section 42 and the Regulation. Section 20(3) of the Regulation provides that an administrator shall not trans-

fer the commuted value of a pension or deferred pension unless the transferee has agreed to administer the amount transferred in accordance with the PBA and Regulation.

Furthermore, section 21(1) of the Regulation requires that in order for an RRSP to qualify as a prescribed retirement savings arrangement pursuant to section 42 of the PBA, it must be established in accordance with the Income Tax Act (Canada) (ITA). Section 21(2) (iii) of the Regulation states that if a deferred or immediate annuity is purchased, it must be provided by a person authorized under the laws of Canada to sell annuities as defined by the ITA under an insurance contract that meets the requirements of section 22 of the Regulation.

A financial institution or a pension fund based outside Canada is most unlikely to be able to meet these requirements, and therefore, a plan administrator could not be satisfied that the requirement of section 21(3) can be met.

It may be appropriate for plan administrators and consultants to obtain independent legal advice if they have any concerns as to whether statutory obligations under the PBA and Regulation are being met.

Administrative Practices



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

SECTION: Merger of Plans

INDEX NO.: M200-151

TITLE: Merger Policy, September 1993

APPROVED BY: Pension Commission of Ontario

PUBLISHED: Bulletin 4/2 (Dec 1993 - Jan 1994) page 8

PUBLISHED: BBS - September 16, 1993

EFFECTIVE DATE: September 16, 1993

REVISED DATE:

The PCO takes the position that a merger of two or more pension plans ("predecessor plans") creates a "successor plan". Therefore, the transfer of assets from a predecessor plan into a successor merged plan requires the prior consent of the Superintendent of Pensions in accordance with subsection 81(4) of the Pension Benefits Act, R.S.O., 1990 (the "PBA").

In accordance with subsection 81(5) of the PBA, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the predecessor plans or that does not meet the prescribed requirements and qualifications.

This merger procedure establishes conditions under which the Superintendent would consider the members' and former members' benefits to be adequately protected as required by the PBA. The conditions apply with respect to asset transfers from plans registered in Ontario.

The conditions outlined in this procedure apply to each predecessor plan prior to the merger and the successor plan after the merger. The conditions should be interpreted in accordance with the terms of the PBA and the regulations under the PBA. An application which meets all of the conditions identified under the merger procedure will be processed in a summary manner. Other applications will be considered on a case-by-case basis. The merger procedure is set out in five parts as follows:

Part A General Filing/Reporting/Notice Requirements

Part B Conditions Applicable to All Pension Plans That Provide Defined Benefits

B.1 Requirement to Obtain a Court Order

B.2 Funding Requirements to be Met Under the Successor Merged Plan

Part C Conditions Applicable to the Merger of a Single-Employer Pension Plan that Provides Defined Benefits with a Multi-Employer Pension Plan

Part D Conditions Applicable to Defined Contribution Pension Plans

Part E Discretion of the Superintendent

A General Filing/Reporting/Notice Requirements

1. (a) An amendment to the predecessor plans which creates the successor plan should be filed along with a fully restated plan text for the successor plan.
(b) The amendment to a predecessor plan which creates the successor plan must not be contrary to the amending provisions or any other relevant provisions of the documents of the predecessor plan or any documents related to the plan.
2. A letter of application for the Superintendent's consent to the asset transfer(s) with respect to the merger should be filed with all of the documents required to be filed or submitted in accordance with this policy. The letter should identify the predecessor plans affected by the merger proposal and also identify the value of the assets to be transferred from each predecessor plan at the proposed date of merger.
3. (a) A report as at the proposed date of merger (a "merger report") should be prepared and filed for each of the predecessor plans which provide defined benefits. Each report should include a going concern valuation, a solvency valuation, and a wind up valuation. The amount of any going concern unfunded liability or solvency deficiency and the special payments required to liquidate the going concern unfunded liability or solvency deficiency should be identified.
(b) A merger report should also be prepared and filed for the successor plan. It should include a going concern valuation, a solvency valuation, and a wind up valuation. The report will be treated as a valuation report for an ongoing plan. Accordingly, the funding requirements for the normal cost and going concern unfunded liability and solvency deficiency should be identified.

Where the merger report on the successor plan indicates a going concern unfunded liability or a solvency deficiency or both, the total monthly rate of special payments should not be less than the total of the monthly special payments required to be made in respect of each of the predecessor plans as indicated in the merger reports under paragraph 3.a) above, with an appropriate adjustment to the amortization periods for such special payments so that their present value will equate to the going concern unfunded liability or solvency deficiency, as the case may be.

In determining the solvency deficiency, if any, of the successor plan, the portion of the "solvency asset adjustment" which consists of items (b), (c) and (d) in the definition in the Regulations should recognize only those special payments required to amortize any going concern unfunded liability in the successor plan.
- (c) In preparing the reports required under paragraphs 3. a) and b) above, the method of valuing the assets and liabilities with respect to each of the predecessor plans and the successor plan must be on a consistent basis.
- (d) A merger valuation report prepared for a predecessor plan which provides defined contribution benefits should identify the assets and liabilities of the plan, determined as if the plan terminated at the date of merger.
4. With respect to each predecessor plan, individual written notice of the proposed merger should be transmitted to:
 - a) each member of the pension plan;
 - b) each former member and any other person who at the date of merger is entitled to receive a payment from the pension plan;
 - c) each trade union that represents members of the plan; and
 - d) any advisory committee established in respect to the plan.

When considered appropriate in the circumstances, the Superintendent may approve other forms of notice for those persons or bodies listed above.

A copy of the notice should be provided to the Superintendent, along with a certification of the date on which the last such notice was transmitted.

At a minimum, the information contained in the notice should include:

- i) the name of the predecessor plan;
- ii) the proposed date of the merger;
- iii) the name of the successor plan;
- iv) an explanation of the proposed merger and transfer of assets and information concerning how the merger would affect the benefits of members, former members and other persons entitled to receive payments from a predecessor plan including information related to how the benefits would be protected under the terms of the successor plan (where the transfer is to a multi-employer pension plan, notice that the benefits would no longer be covered by the Pension Benefits Guarantee Fund should be provided); and
- v) advice that comments may be submitted to the administrator and the Superintendent within a forty-five (45) day period following receipt of the notice.

B Conditions Applicable to all Pension Plans That Provide Defined Benefits

Pension benefits accrued to the date of merger and any ancillary benefits at the date of merger shall not be less under the provisions of the successor plan.

B.1 Requirement to Obtain a Court Order

Where the wind up valuation of a merger report for a predecessor plan discloses a surplus, a court order in relation to the predecessor plan should be obtained. The order should indicate that:

- a) the employer is entitled to apply an actuarial gain to reduce employer contributions for normal costs in accordance with subsection 7(3) of the Regulations under the PBA,
- b) the plan provides for payment of surplus to the employer on the wind up of the plan, and
- c) the plan permits merger.

Where any plan or plan-related documents have been or are to be amended in relation to surplus, this should be brought to the court's attention when the order is sought so that any issues concerning the legality of such amendment(s) can be considered simultaneously by the court.

Advance written notice of the court application made in order to satisfy the above conditions should be given to:

- i) the Superintendent, and
- ii) those persons and bodies entitled to notice of the proposed merger pursuant to section 4 of Part A above.

Where an employer is already in possession of a court order which satisfies the above conditions, disclosure of the declaration made by the court must be included in the notice under section 4 of Part A.

A copy of the court order should be included as part of the application.

B.2 Funding Requirements to be Met Under the Successor Plan

Funded Ratio Requirement

On the completion of the transfer of assets from the predecessor plans, the funded ratio in the successor plan must not be less than the funded ratio of the highest funded ratio of the predecessor plans, but need not exceed 1.0.

For the purposes of B.2, the funded ratios should be determined from the wind up valuations in the merger reports.

C Conditions Applicable to the Merger of a Single-employer Pension Plan that provides Defined Benefits with a Multi-employer Pension Plan that Provides Defined Benefits

Where assets are to be transferred from a plan which is a **single-employer pension plan that provides defined benefits** to a successor plan which is a **multi-employer pension plan that provides defined benefits and that is established pursuant to a collective agreement or a trust agreement**, the following conditions apply:

- i) the requirements of B.1 apply to each single-employer pension plan,
- ii) the requirements of Part A shall apply to each single-employer pension plan;
- iii) with respect to the multi-employer pension plan, paragraph 3. b) of Part A shall not apply and, instead of the restated plan text required under paragraph 1. a) of Part A), an appropriate amendment to the plan should be filed; and
- iv) where the bargaining agent(s) for a predecessor plan does not represent all of the members and former members of the plan, the Superintendent may consider that the pension benefits and other benefits of the members and former members who are not represented by a trade union are protected where annuity purchases are made or where the multi-employer pension plan contains a provision which requires that the pension benefits and other benefits to which those unrepresented persons are entitled at the date of merger under the predecessor plan will be fully funded in the multi-employer pension plan while the plan continues and on plan termination.

D Conditions Applicable to Defined Contribution Pension Plans

- 1. Where surplus exists at the proposed date of merger in a predecessor plan which is a defined contribution plan, B.1 applies to the application for consent to the transfer of assets with respect to that particular predecessor plan.
- 2. Where paragraph 1 above does not apply, only the conditions under Part A should be satisfied.

E Discretion of the Superintendent of Pensions

Notwithstanding the foregoing requirements, the Superintendent may consent to a transfer of assets relating to a merger of pension plans where the Superintendent is satisfied that the pension benefits and other benefits of the members and former members of the predecessor plan are protected in the circumstances.



SECTION:	Class of Employee
INDEX NO.:	C100-100
TITLE:	Clarification (formerly Interpretation Bulletin I), PBA s. 31 - 34
APPROVED BY:	Superintendent of Pensions
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994), page 12
PUBLISHED:	BBS - September, 1993
EFFECTIVE DATE:	March 1, 1988
REVISED DATE:	December 3, 1993

Several issues have been raised by plan administrators concerning the operation and effect of this part of the Act. This administrative practice will clarify:

- 1) the meaning of "class of employee" within sections 31 and 33 including "nature of employment" and "terms of employment"; and
- 2) the meaning of "pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained ... for employees of the same class" in section 34.

Class of Employees

In determining what constitutes a "class of employees", the Superintendent will be guided by subsection 33(2) of the Act and therefore examine both the issues of the "nature" and the "terms" of employment. Whether or not a separate class of employees exists will depend upon the specific employment circumstances of each situation.

One goal of pension reform embodied in the *Pension Benefits Act* is the extension of pension benefits without restriction due only to part-time status.

While historically pension plans have treated those types of employees listed below as separate classes, the Superintendent may, nevertheless, determine a class of employee based on the specific employment circumstances of a particular situation:

- a) employees paid on a salaried basis;
- b) employees paid on an hourly basis;
- c) employees who are members of a trade union;
- d) employees who are not members of a trade union;
- e) supervisory employees;
- f) management employees;
- g) executive employees;
- h) corporate officers;
- i) employees who are also significant shareholders of the employer; and
- j) such identifiable groups as are acceptable to the Superintendent.

Equivalent Benefits

For a pension plan established for part-time employees to be found to provide “reasonably equivalent benefits” to the sister plan for full-time employees of the same class, all benefits must be reasonably equivalent. All ancillary benefits, improvements and employee costs must thus be similar.

It is not possible to establish a defined contribution plan which successfully mirrors a defined benefit plan. A mere duplication of contributions is not, due to the vagaries of investment returns and apportionment of risk between the sponsor and members, sufficient to satisfy the criteria of reasonable equivalence.



SECTION:	Gradual and Uniform
INDEX NO.:	G100-100
TITLE:	Age-Related Benefit Formulae, PBA, ss. 11(1) & (4)
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994), page 14
PUBLISHED:	BBS - September, 1993
EFFECTIVE DATE:	December 19, 1991
REVISED DATE:	December 3, 1993

The PCO considers that benefit formulae, whether in defined benefit or defined contribution plans, that are based exclusively on the age of plan members do not satisfy the requirement in subsection 11(1) of the PBA that benefit accrual be uniform. Nevertheless, the legislation gives the Superintendent discretion in subsection 11(4) to register a plan with a benefit formula which is not uniform, if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members.

In exercising that discretion, the Superintendent will be guided by such factors as:

- a) whether the formula is fair, in the sense that it provide "value for money" for plan members;
- b) whether it is reasonable in the circumstances of the particular industry;
- c) whether full disclosure has been provided;
- d) whether there is substantial membership agreement with the formula by the affected plan members (and former members, if appropriate);
- e) whether the formula is prospective;
- f) other factors as seem appropriate in the circumstances.

Defined Benefit Plans

A descending age-related benefit formula in a defined benefit plan usually may be registered through the exercise of the Superintendent's discretion under subsection 11(4), as a reasonable exception to the basic requirement that benefits accrue in a uniform manner.

An ascending, or "back-loaded", age-related benefit formula usually will not be accepted for registration as reasonable exception under subsection 11(4).

Defined Contribution Plans

Usually, a defined contribution plan which has a benefit formula based on age may be registered if:

- a) the contributions made on behalf of an employee by the employer vary to provide increased accrual to employees who are older, or have greater age and service, or
- b) contributions increase according to age, or age and service.



SECTION:	Notice Requirements
INDEX NO.:	N300-100
TITLE:	Guideline - Notice of Wind Up of a Pension Plan (formerly Policy Statement I: Notice Requirements), PBA, ss. 68(2)
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994), page 15
PUBLISHED:	BBS - September, 1993
EFFECTIVE DATE:	March 1, 1988
REVISED DATE:	December 3, 1993

I Written Notice of Proposal to Wind Up the Pension Plan

The administrator of a pension plan shall give written notice of a proposal to wind up the pension plan to:

1. the Superintendent;
2. each member of the pension plan;
3. each former member of the pension plan who
 - a) is entitled to a deferred pension payable from the pension fund;
 - b) is in receipt of a pension payable from the pension fund;
 - c) is entitled to commence receiving payments of pension benefits from the pension fund within one year after termination of employment or membership, or
 - d) is entitled to a refund of contributions, including additional voluntary contributions, from the pension fund;
4. each trade union that represents members of the pension plan;
5. the advisory committee of the pension plan, and
6. any other person entitled to a payment or deferred payment from the pension fund, including:
 - a) a former spouse of a member or former member who is entitled to a portion of the pension benefit accrued by the member or former member pursuant to a domestic contract or court order;
 - b) a widow or widower of a deceased former member who is entitled to survivor benefits which are to be paid from the pension fund;
 - c) any designated beneficiary named by a deceased former member entitled to payment from the pension fund;
 - d) any personal representative of a member or former member entitled to payment from the pension fund, and
 - e) any dependent children of a deceased former member entitled to payment from the pension fund.

II Where Written Notice is Impractical

Where individual notice is impractical, a plan sponsor may apply to the Superintendent for permission to provide notice by means of advertisement in a newspaper or newspapers in the area or areas of employment or former employment. Prior to the granting of such permission the Superintendent will require:

- i) the reasons why individual notice is impractical;
- ii) the proposed wording of such a notice, and
- iii) details as to the intended circulation of such a notice.

III **Important Notes**

The former "Policy Statement I: Notice Requirements" is now repealed. This policy replaces Part A of former Policy Statement I, regarding notice of wind up of a pension plan.

Part B of former Policy Statement I, regarding notice of partial wind up of a pension plan, was superseded by the Administrative Practice W100.301, Written Notice of Proposal for Partial Wind Up of a Pension Plan, published in the August 1993 Bulletin, Volume 4, Issue 1, page 23.

Part C of former Policy Statement I, regarding notice of a surplus withdrawal application, was superseded by Administrative Practice S900.500, published in the October 1992 Bulletin, Volume 3, Issue 2, page 8.

Part D of former Policy Statement I, regarding restrictions on surplus withdrawal on plan wind up, was also superseded by Administrative Practice S900.500, published in the October 1992 Bulletin, Volume 3, Issue 2, page 8.

How To Change Province Of Registration

It is a requirement of Ontario's *Pension Benefits Act* that any pension plan that has members employed in Ontario must be registered with the PCO. However, because of the existence of a Memorandum of Reciprocal Agreement among Ontario and other Canadian pension regulators, pension plans are required only to register in the jurisdiction in which the plurality of members is employed.

In a multi-jurisdictional pension plan membership numbers can shift from jurisdiction to jurisdiction over time. Such a shift may affect the plurality of plan members. If this occurs, the registration of the plan may be transferred from the original jurisdiction to the one having the plurality. However, change of registration is not usually necessary if the shift in membership is temporary. If the change results from a plant closure, the movement or hiring of a large group of employees, or the purchase of a new division a transfer of registration would normally occur.

Some plan administrators have asked what steps, if any, they should take when they become aware of a change in plurality of membership such that the jurisdiction of registration might be affected. (The Annual Information Return will reveal such a change in the plurality of membership.)

The Administrator or agent should first advise the PCO's Pension Officer or Analyst who is responsible for their plan. Once it has been confirmed that a change in jurisdiction of registration is required, PCO staff must bring the pension plan file up-to-date and ensure that plan beneficiaries and their representatives receive notice of the pending change.

Notice

PCO staff will require that the Administrator advise all members, former members, and any other persons entitled to benefits under the pension plan, and any collective bargaining agents representing members of the plan, of the request for a change of jurisdiction of registration. Confirmation that notice has been distributed, and the date of distribution will be required. The PCO requires a 45 day waiting period after notice is delivered before proceeding with the transfer.

Outstanding Transactions

PCO staff must ensure that all outstanding transactions relating to the plan are resolved before transferring registration to another jurisdiction. This may mean that the Administrator will be required to provide any missing AIRs, amendments or other plan documents, or any required financial statements. PCO staff will also require that Pension Benefit Guarantee Fund filings and assessments are up-to-date, and that any other outstanding applications or other matters are completed.

After the above steps have been taken the transfer will be arranged between the respective regulators.

Life Income Fund - Minimum and Maximum Withdrawals

The Ontario LIF is a tax-deferred retirement savings arrangement which is acceptable for registration under the Income Tax Act (Canada), (the "ITA") as a Registered Retirement Income Fund (a "RRIF"). However, no locked-in monies may be transferred to a RRIF for which the specimen document submitted for the approval of the Minister of National Revenue does not also comply with the LIF requirements identified in Schedule 1 of Regulation 909 under the PBA.

The documents for an Ontario LIF must provide information pertaining to spousal protection, disclosure, acceptable transfers and minimum and maximum withdrawal formulae. The specimen document submitted for the approval of the Minister of National Revenue must not permit withdrawals which contravene the following requirements which are applicable to minimum and maximum withdrawals:

1. No withdrawals are permitted before age 55. (Please note that the maximum withdrawal table shows a maximum withdrawal for an individual turning age 55 during the year so that the maximum withdrawal after the individual has turned 55 can be determined.)
2. In the initial fiscal year of a LIF, the maximum withdrawal amount is prorated based on the number of months in that fiscal year divided by 12, with partial months counting as one month.
3. Withdrawals can be made in the first fiscal year of the LIF provided the individual is 55 years old.
4. The maximum withdrawal in a fiscal year is zero if any part of the assets used to purchase the LIF was transferred from another LIF during the year.
5. Withdrawals from a LIF must begin no later than the end of the second fiscal year of the LIF.
6. No annual withdrawals are permitted after December 31 of the year the LIF holder attains 80 years of age. (The balance of the LIF must be transferred to purchase an annuity which complies with the requirements of the Act and the regulations.)

Minimum Withdrawals

A table that identifies the minimum percentage of a LIF balance which must be withdrawn on an annual basis, beginning no later than the second year of the LIF, is shown on the next page. The minimum withdrawal percentages shown are a result of calculations made in accordance with the requirements under the ITA for minimum annual withdrawals from a RRIF. (Please refer to the penultimate paragraph under this section for clarification of an exception which exists due to the wording of Schedule 1 of Regulation 909.)

The table opposite indicates the minimum withdrawal as a percentage of the LIF balance at the beginning of a fiscal year. The Regulation states that the balance in the LIF at the beginning of a year must be divided by an applicable factor. The table shows the reciprocal of such factors (1 / factor) and expresses them as a percentage in order that the annual minimum withdrawal amounts may easily be determined.

Percentages shown in the table are multiplied by the LIF balance at the beginning of the year to derive the dollar amount of minimum withdrawal during the year. Since the minimum formula established under the ITA is applicable to minimum withdrawal requirements for persons age 55 to age 80 (the lifetime of an Ontario LIF), the minimum withdrawal percentages shown below will not change unless the minimum withdrawal formula under the ITA is amended.

An article on the Life Income Fund published in the August, 1993 *PCO Bulletin* indicated that minimum and maximum tables for withdrawals from an Ontario LIF would be published annually. However, because the minimum does not change except as a result of ITA (Canada) amendments, the PCO will **not** publish a minimum withdrawal table on an annual basis.

Please note that there was an error in the minimum withdrawal table published in the December 1992 PCO Bulletin. That table showed a minimum withdrawal of 8.53% for a person age 80 where the LIF purchase would be subject to Revenue Canada's rules for "new" RRIFs. The correct figure should have been 9.09%. Accordingly 9.09% is applicable to both the old and the new columns. The 8.53% figure is the Income Tax Act minimum withdrawal for a RRIF. However, the minimum withdrawal from a LIF is 9.09% in accordance with the wording of Regulation 909 under the Act. The Government is aware of this difference and an amendment to the Regulation to the PBA is being considered.

In using the table it should be noted that in the initial fiscal year of a LIF the minimum withdrawal is zero. The percentages reflect calculations made in accordance with the ITA's requirements for RRIFs established under the "old" pre-1993 rules and for RRIFs established under the "new" post-1992 rules.

Maximum Withdrawals

The provisions identified in Schedule 1 of Regulation 909 restrict the amounts which may be withdrawn annually. In accordance with subsection 5(3) of Schedule 1, one of the two prescribed methods of calculating the maximum withdrawal must be applied for all years of the LIF. The two methods permitted under Schedule 1 are:

- 1) calculation of an interest rate not to exceed six per cent per annum for all years; or,

Table 1
Minimum Withdrawal Percentages

Age at Start of Year	New Age During Year	Years to End of Year Turn 90	Minimum Withdrawal as a Percentage of the LIF Balance at the Start of Year	
			(Old)	(New)
54	55	36	0.00%	(same as "old" to age 70)
55	56	35	2.86%	
56	57	34	2.94%	
57	58	33	3.03%	
58	59	32	3.13%	
59	60	31	3.23%	
60	61	30	3.33%	
61	62	29	3.45%	
62	63	28	3.57%	
63	64	27	3.70%	
64	65	26	3.85%	
65	66	25	4.00%	
66	67	24	4.17%	
67	68	23	4.35%	
68	69	22	4.55%	
69	70	21	4.76%	
70	71	20	5.00%	
71	72	19	5.26%	7.38%
72	73	18	5.56%	7.48%
73	74	17	5.88%	7.59%
74	75	16	6.25%	7.71%
75	76	15	6.67%	7.85%
76	77	14	7.14%	7.99%
77	78	13	7.69%	8.15%
78	79	12	8.33%	8.33%
79	80	11	9.09%	9.09%

Note: Individuals who purchased the LIF before 1993 may use either the old or the new percentages, between the ages of 71 and 77. At age 78, the "new" percentage must be used.

- 2) calculation of an interest rate that is not higher than the prescribed rate (the rate published in the Bank of Canada Review under CANSIM B-14013 for the December preceding the 1st day of January in the year a calculation is made) for the first fifteen years and a rate that does not exceed six per cent for the remaining years.

The formulae for determining maximum annual withdrawal amounts using the CANSIM method is shown below. A table which identifies the maximum percentage of a LIF balance which may be withdrawn in 1993 using the maximum interest assumptions permitted under the CANSIM method is also included.

Please note that the presentation of the maximum table is identical to that for the minimum table. Maximum withdrawals are shown as a percentage of the LIF balance at the beginning of the year.

The following explanations may be of assistance in using the maximum withdrawal table.

1. The applicable maximum withdrawal percentage in the table is applied to the LIF balance at the start of the year to determine the maximum dollar amount of withdrawal in the year.

To illustrate, for an individual who turns age 60 during 1994 (attained age is 59) and whose LIF has a balance of \$100,000 at January 1, 1994, the maximum withdrawal during 1994 would be:

$$\$100,000 \times 7.40699\% = \$7,406.99$$

2. The maximum withdrawal in a year is based on the number of years from January 1st of the year to December 31st of the year the individual turns age 90. Thus the "age at start of year" is the age just before January 1st, and the "new age" is the age the member will attain during the year including January 1st birthdays.
3. The table does **not** represent withdrawal maxima for years other than 1994. The maximum withdrawal will change every year regardless of when the LIF was purchased. The maximum withdrawal table for 1995 will be published as soon as it is available in 1995.

Table 2
Maximum Withdrawal Percentages

Age at Start of Year	New Age During Year	Years to End of Year Turn 90	1994 Maximum Withdrawal as a Percentage of the LIF Balance at the Start of Year
54	55	36	7.07854%*
55	56	35	7.13467%
56	57	34	7.19514%
57	58	33	7.26037%
58	59	32	7.33081%
59	60	31	7.40699%
60	61	30	7.48949%
61	62	29	7.57897%
62	63	28	7.67618%
63	64	27	7.78199%
64	65	26	7.89737%
65	66	25	8.02348%
66	67	24	8.16162%
67	68	23	8.31334%
68	69	22	8.48045%
69	70	21	8.66507%
70	71	20	8.86976%
71	72	19	9.09757%
72	73	18	9.35217%
73	74	17	9.63808%
74	75	16	9.96087%
75	76	15	10.32751%
76	77	14	10.75142%
77	78	13	11.24589%
78	79	12	11.82864%
79	80	11	12.52382%

*prorated over the number of months the planholder was age 55.

Note: The above table is based on the maximum interest assumptions permitted using the CANSIM method. The CANSIM interest rate (December 1993) of 7.12% is applicable for the first 15 years following January 1, 1994, and 6% thereafter. The maximum withdrawal table for 1995 will be published as soon as it is available in 1995.

Ontario Life Income Fund - Maximum Annual Withdrawal Formulae Using the CANSIM Method

Description of Mathematical Formulae Required to Establish the Annual Maximum Withdrawal Amount Using the CANSIM Method

- C Represents the fund balance at the starting date of the fiscal year;
- H Represents the number of years between 1 January of the year in which the calculation is made and 31 December of the year during which the pensioner reaches age 90;
- i_1 Represents the applicable interest rate for the first 15 years. This rate may not exceed that obtained for long-term bonds issued by the Government of Canada for the month of December preceeding the year of valuation (B-14013).
- i_2 Represents the applicable interest rate for the period after the first 15 years. This rate may not exceed 6%.
- $V_1 = 1/(1+i_1)$
- $V_2 = 1/(1+i_2)$
- N Represents the number of months in the initial fiscal year of the fund, with every portion of an incomplete month counting as one month.
- M Represents the maximum withdrawal authorized during a fiscal year. The limit "M" is established as follows:

$$M = C/F * N/12$$

- F Represents the value, at the starting date of the fiscal year, of a pension of which the annual payment is \$1 payable at the beginning of each year between that date and the 31 December of the year during which the pensioner reaches age 90. Calculation for the value "F" is made using the following formulas:

1. When H is equal to or less than 15 years and the calculation is made on 1 January:

$$F = (1 - V_1^H) / (i_1 * V_1)$$

2. When H is equal to or less than 15 years and the calculation is made on a date which is not 1 January:

$$F = 1 + V_1^{1/365} * (1 - V_1^{(H-1)}) / (i_1 * V_1),$$

where "J" is the number of days between the first day of the month in which the calculation is made and the end of the fiscal year of the LIF.

3. When H is greater than 15 years and the calculation is made on 1 January:

$$F = (1 - V_1^{15}) / (i_1 * V_1) + V_1^{15} * ((1 - V_2^{(H-15)}) / (i_2 * V_2))$$

4. When H is greater than 15 years and the calculation is made on a date which is not 1 January:

$$F = 1 + V_1^{1/365} * (1 - V_1^{14}) / (i_1 * V_1) + V_1^{(14+J/365)} * ((1 - V_2^{(H-15)}) / (i_2 * V_2))$$

where "J" is the number of days between the first day of the month in which the calculation is made and the end of the fiscal year of the LIF.

Regulations

Amendments to Regulation 909/90 to the Pension Benefits Act filed on December 2, 1993:
O. Reg. 785/93, 786/93 and 787/93 to Ontario Regulation 909/90

Re: Extension of Exemptions from Filing Compliance Amendments

The amendment extends the existing exemptions under subsections 47(4) and 47(5) of Regulation 909 from the requirement to file amendments which comply with the Act and the regulations to December 31, 1994. The exemptions are applicable only to pension plans which provide defined benefits and have been extended from December 31, 1993.

Administrators of pension plans which provide defined benefits are required to file amendments that comply with the requirements of the Income Tax Act (Canada), (the "ITA") by December 31, 1993. There are a number of unresolved conflicts (tax harmonization issues) between the requirements of the ITA and the Act and regulations. Many plan Administrators may be unable to simultaneously file amendments which comply with the requirements of both statutes. This further extension of the compliance filing deadline eases the compliance dilemma faced by plan Administrators and gives the Ontario Government more time to resolve the tax harmonization issues.

On December 2, 1993 O. Reg. 785/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 18, 1993 issue:

**REGULATION TO AMEND
REGULATION 909 OF REVISED REGULATIONS OF ONTARIO, 1990
MADE UNDER THE
PENSION BENEFITS ACT**

Note: Since January 1, 1993, Regulation 909 has been amended by Ontario Regulation 433/93. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

1. Subsections 47(4) and (5) of Regulation 909 of the Revised Regulations of Ontario, 1990 are revoked and the following substituted:
 - (4) Every employer who, on January 1, 1988, maintained a pension plan that provides defined benefits is exempt from subsection 19(1) of the Pension Benefits Act, 1987 for the period ending December 31, 1994.
 - (5) The parties to a collective agreement or arbitration award governing a pension plan described in subsection 19(2) of the Pension Benefits Act, 1987 that provides defined benefits are exempt from that subsection for the period ending December 31, 1994.
2. This Regulation comes into force on January 1, 1994.

* * *

Re: Declaration of Compliance with the Act and the Regulations

When this amendment takes effect on May 1, 1994, Form 1 under Regulation 909 (Application for Registration of a Pension Plan) will be amended to require that the Administrator complete a declaration of compliance with the Act and the regulations. The amendment also establishes Form 1.1 (Application for Registration of a Pension Plan Amendment) as a prescribed form under Regulation 909. The completion of a declaration of compliance is also a requirement under Form 1.1.

Administrators of pension plans must administer the plans and the plan funds in accordance with the Act and the regulations. Making the completion of a declaration of compliance a prescribed requirement under Form 1 and Form 1.1 ensures that each Administrator acknowledges his or her responsibility for compliance in writing.

Applications for the registration of plan documents received by the PCO on and after May 1, must be made on amended Form 1 or Form 1.1, as applicable. Form 1 as it existed prior to the effective date of the amendment must be used for all applications for the registration of a pension plan received by the PCO prior to May 1, 1994. Applications made under Form 1 should be submitted with a completed Pension Plan Document Checklist.

Applications for the registration of plan amendments which are received by the PCO prior to May 1, 1994 may be filed using either Form 1.1 or the Pension Plan Document Checklist.

A *Compliance Assistance Guideline* which will assist plan Administrators in the completion of prescribed forms including a requirement for a declaration of compliance with the Act and the Regulation will be available prior to May 1, 1994.

On December 2, 1993 O. Reg. 786/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 18, 1993 issue:

**REGULATION TO AMEND
REGULATION 909 OF REVISED REGULATIONS OF ONTARIO, 1990
MADE UNDER THE
PENSIONS BENEFITS ACT**

Note: Since January 1, 1993, Regulation 909 has been amended by Ontario Regulation 433/93. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

1. **Section 83 of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by adding the following subsection:**

(1.1) An application for registration of an amendment to a pension plan shall be in Form 1.1.

2. **Form 1 to the Regulation is revoked and the following substituted:**

Form 1

Pension Benefits Act

Application for Registration of a Pension Plan

(Form 1 and Form 1.1 are not reproduced here. They will form part of the above-mentioned Compliance Assistance Guideline to be published in the spring of 1994.)

3. **The Regulation is amended by adding the following form:**

Form 1.1

Pension Benefits Act

Application for Registration of a Pension Plan Amendment

4. **This Regulation comes into force on May 1, 1994.**

* * *

Re: Calculation of Transfer Values for Pensions and Designation of New Brunswick and British Columbia

When a pension plan member exercises his or her right to transfer the commuted value of that member's pension out of the plan into a locked-in vehicle, section 19 of Regulation 909/90 formerly required that the commuted value shall not be less than the value determined using 1988 Canadian Institute of Actuaries (CIA) recommendations for computing transfer value. In 1993, the CIA replaced its 1988 recommendations with new recommendations for calculating transfer values.

This amendment to section 19 of Regulation 909/90 replaces the 1988 CIA recommendations in the Regulations with the new 1993 CIA recommendations for calculating transfer values. The change is effective January 1, 1994.

The same amendment to the Regulation designates New Brunswick and British Columbia as provinces to which the Pension Commission of Ontario may delegate its functions and powers, and from which it may accept similar delegations.

The Pension Commission has the authority to delegate supervisory authority to, and to receive a similar delegation from, provinces or territories designated in subsection 23(1) of Regulation 909/90 as having in force legislation substantially similar to the Act. Currently, Alberta, Manitoba, Newfoundland, Nova Scotia, Quebec, Saskatchewan, the Northwest Territories, and the Yukon Territory are so designated. The six provinces are signatories, with Ontario, to the Memorandum of Reciprocal Agreement among pension regulators.

Both New Brunswick and British Columbia enacted modern pension legislation recently. New Brunswick is also a recent signatory of the Memorandum of Reciprocal Agreement among pension regulators, and British Columbia has indicated its intention to sign the agreement as soon as possible.

This amendment adds The Province of New Brunswick and The Province of British Columbia to the list of designated jurisdictions in subsection 23(1) of Regulation 909/90. The change is effective January 1, 1994.

On December 2, 1993 O. Reg. 787/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 18, 1993 issue:

**REGULATION TO AMEND
REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990
MADE UNDER THE
PENSION BENEFITS ACT**

Note: Since January 1, 1993, Regulation 909 has been amended by Ontario Regulation 433/93. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

1.-(1) Subsection 19(1) of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:

(1) For the purposes of subsection 42(1) of the Act, the commuted value of a pension, deferred pension or ancillary benefit shall not be less than the value determined in accordance with "Recommendations for the Computation of Transfer Values from Registered Pension Plans" issued by the Canadian Institute of Actuaries and effective September 1, 1993.

(2) Subsection 19(5.1) of the Regulation is amended by striking out "minimum" in the third line.

2. Subsection 23(1) of the Regulation is amended by adding the following paragraphs:

9. The Province of New Brunswick.

10. The Province of British Columbia.

3. This Regulation comes into force on January 1, 1994.

Updated CIA Transfer Value Recommendations

Note: Readers should refer to "Regulations" for O. Reg. 787/93 which amends Regulation 909 and which replaces the 1988 CIA Recommendations for computing transfer values with the 1993 CIA Recommendations.

The Canadian Institute of Actuaries recently adopted updated Recommendations for the Computation of Transfer Values from Registered Pension Plans. The new Recommendations were effective on September 1, 1993. The 1993 CIA Recommendations replace the previous Recommendations which were effective on November 14, 1988. The CIA has also provided actuaries with guidance on acceptable transitional practices with respect to commuted values based on unisex actuarial tables.

The amendment to the Regulation takes effect on January 1, 1994. *In the interim, the CIA Recommendations (effective on September 1, 1993) - and binding on actuaries - are inconsistent with the requirements of the PBA.* This article explains how commuted values are to be computed for the period between September 1, 1993 and December 31, 1993.

Commuted Values that do not Vary by Sex

Section 52 of the PBA does not allow the sex of the member to be taken into account in determining the amount or the commuted value of certain benefits. The commuted value of such benefits must be determined on a "unisex" basis. Commuted values of benefits in respect of employment after December 31, 1986 cannot vary by the sex of the member. In certain circumstances the commuted values of benefits in respect of service prior to January 1, 1987 likewise cannot vary by the sex of the member.

The 1993 CIA Recommendations specify the required treatment of benefits which can and cannot vary by the sex of the member. According to the CIA, where unisex commuted values are required, blended mortality rates must be used in determining commuted values. The blended mortality approach should be adopted only when unisex commuted values are required by either:

- the applicable legislation; or
- the provisions of the plan; or
- the plan administrator, if the administrator is so empowered by the provisions of the plan.

Until the adoption of the 1993 Recommendations, it was a common practice to determine the commuted value of benefits for all years of service on a unisex basis. Such a practice was acceptable to the PCO. Now this practice may be restricted in many circumstances.

Application of the new CIA Recommendations

The application of the new CIA Recommendations will have a different effect depending on whether the commuted value is calculated for the termination of membership of an individual or for a full or partial plan wind up.

Commuted Values on Individual Termination of Membership

On the termination of an individual member, the administrator of the plan must comply with the Regulation. Accordingly, the administrator must determine commuted values using the 1988 CIA Recommendations for terminations that occur before January 1, 1994 even if the calculation is done after January 1, 1994. The commuted value may be based on unisex mortality tables for all benefits.

However, actuaries are required to comply both with the Regulation and the 1993 CIA Recommendations. Consequently, if an actuary calculates the commuted value, or recommends the basis to be used for calculating the commuted value, the actuary must use the greater of the 1988 or 1993 CIA Recommendations in order to comply with both the Regulation and the CIA requirements for terminations occurring between September 1 and December 31, 1993.

The requirement to use the greater of the 1988 or 1993 CIA Recommendations would also apply if the plan document requires that commuted values be calculated by an actuary or on a basis recommended by an actuary.

It is acceptable to determine the commuted value of benefits in respect of all years of service on a unisex basis if the CIA transition requirements are satisfied. That is, in certain circumstances the actuary can use or recommend a unisex basis for all benefits if the actuary has written direction from the plan administrator or sponsor that the plan will be retroactively amended to provide such unisex commuted values.

If a member is terminating on or after January 1, 1994 and the commuted value calculation was done before January 1, 1994, the 1993 CIA transfer values as prescribed in the Regulation must be used.

Commuted Values on Full or Partial Plan Termination

In the case of a full or partial plan wind up, the commuted values must be calculated by an actuary since section 16 of the Regulation requires that the wind up report be prepared by an actuary. Consequently, for wind ups between September 1, 1993 and December 31, 1993 inclusive, commuted values must be determined on the greater of the 1988 or 1993 CIA Recommendations.

In a wind up on or after September 1, 1993 and, in order to provide unisex commuted values for all benefits, the plan must be amended rather than relying on the CIA transitional rules.

PCO staff cannot accept wind up reports with a valuation date on or after September 1, 1993 with unisex commuted values for benefits in respect of all service unless:

- i) the report includes an indication that the plan document has a provision allowing the actuary to calculate such unisex commuted values; or
- ii) the report includes an indication that the plan document has a provision allowing the administrator to require the actuary to calculate such unisex commuted values and that such direction by the administrator has been provided.

Your Questions Answered

We are told by our readers that "Your Questions Answered" is one of the most popular sections of the PCO Bulletin. The section is based on enquiries from our readers and the facts that they provide to us. It must be remembered that, although you may believe you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case.

Accordingly, the answers to the questions in this section have no legal authority nor should they be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.

Q. Is an employer who funds a pension plan which provides plan members with an indexed pension benefit at retirement obligated to include indexation in the calculation of the deferred pension of a terminating member who has not elected to retire immediately?

A. Yes, if a pension plan contains a contractual provision for the payment of an indexed pension benefit, indexation must be included in the calculation of the deferred pension as required under subsections 36(3) and 37(3) of the PBA.

Where transfer options are available at termination, as required by the Act and as permitted under the terms of a pension plan, the commuted value of the deferred pension (including indexation) must be determined in accordance with the CIA's Recommendations for the Computation of Transfer Values. Upon commencement of the payment of a retirement pension, a deferred vested member is entitled to receive increases calculated in accordance with the indexation formula in effect at that individual's date of termination.

Q. I am an active member of a pension plan which will provide me with an indexed pension at retirement. Prior to my retirement, could the plan be amended to entirely eliminate the existing inflation protection provision?

A. No, an amendment which would have the effect of eliminating the obligation to index benefits already accrued or to freeze increases at the effective date of the amendment would be a void amendment under subsection 14(1) of the Act. However, an amendment which would have the effect of deleting the indexation provision in its entirety for future benefit accruals would be acceptable for registration under the Act.

In the latter instance, the amendment would affect active members only. Benefits accrued on and after the effective date of the amendment would not be indexed. The amendment would have no effect on the existing contractual requirement to provide ongoing cost-of-living increases for all benefits accrued to the effective date of the amendment (active members' benefits, pensions in pay and deferred vested benefits).

Q. In accordance with subsection 7(3) of the Regulations, in a year where an actuarial gain exists, the actuarial gain may be applied to reduce any employer contributions for normal costs. How is the employer's right to continue taking contribution holidays affected when the period covered by a valuation report has passed and a report for the following period (the subsequent period) has not yet been provided to the PCO?

A. Where the period covered by a report filed with or submitted to the PCO has passed, the plan administrator has a specified number of months to provide the PCO with a report which covers the subsequent period. Until a report covering the subsequent period is provided, subsection 4(5) of the Regulation permits the employer to continue funding the plan in accordance with the last submitted or filed report. Subsection 4(5) provides the authority for the employer to continue to apply actuarial gains identified in the last report to take contribution holidays over any period not covered by the report (i.e., the interim period between the end of the period covered by the last report and the date the report for the subsequent period is provided to the PCO).

If the report covering the subsequent period reveals that no actuarial gain existed during the interim period over which the employer continued to take contribution holidays, employer payments for normal costs over that interim period will be considered to be in arrears. Accordingly, when the report covering the subsequent period is provided to the PCO, immediate payment of all outstanding employer contributions plus applicable interest must be made to the plan fund.

- Q.** In accordance with subsection 7(4) of the Regulations, in any year where an actuarial gain exists, subject to specified circumstances, an actuarial gain may be applied to pay the annual assessment to the Pension Benefits Guarantee Fund (the PBGF) which is otherwise required by subsection 37(1) to be paid by the employer. Is the employer permitted to use actuarial gains to pay an annual PBGF assessment for a period not covered by the last filed or submitted report?
- A.** Subsection 4(5) of the Regulation provides the authority for an employer to continue taking contribution holidays in accordance with subsection 7(3) where the period covered by the last report filed with or submitted to the PCO has passed and the report for the subsequent period has not been provided to the PCO. However, no similar authority is provided with respect to the employer's right under subsection 7(4). Accordingly, an employer must not use surplus identified in a report to pay an annual PBGF assessment for a period not covered by the report (i.e., the interim period between the end of the period covered by the last report and the date the report for the subsequent period is provided to the PCO).
- Requirements applicable to the calculation of the annual PBGF assessment determined in accordance with the last filed or submitted report are identified under section 37 of the Regulations.
- Q.** How does subsection 70(2) of the Act affect the settlement of a benefit entitlement where a sole member or the last member of a pension plan terminates employment?
- A.** Subsection 70(2) restricts payment out of a plan fund in settlement of a wind up entitlement only and does not apply where a notice of proposal to wind up the plan has not been provided on or prior to the date of termination. If no subsection 68(2) notice has been given, the administrator may process the entitlement as a normal termination settlement.
- Q.** My client has elected not to redetermine prior solvency deficiencies under subsection 5(8) of the Regulations and has filed an Election Report prepared in accordance with subsection 5(11). As a result of the re-amortization of prior solvency deficiencies to the end of 2002, a positive initial solvency balance as well as a positive prior year credit balance were reported in the Election Report. Calculations done subsequent to the filing revealed that a zero prior year credit balance could have been reported if the prior solvency deficiencies were not re-amortized. Is it possible to make a request to withdraw the filed report in order that a revised report which reflects the zero prior year credit balance calculation may be filed?
- A.** Yes. A request for re-filing will be permitted as long as the revised report is received by the PCO before January 1, 1994. A written request to re-file an Election Report for a pension plan must be submitted to the Pension Officer responsible for the plan.
- Q.** If a pension plan provides for a defined benefit past service entitlement and a defined contribution current service entitlement with a minimum defined benefit guarantee, is it acceptable to ignore the past service liabilities and the assets associated with those liabilities when determining PBGF liabilities and the PBGF assessment base?
- A.** It is not acceptable to ignore the past service liabilities and the assets associated with those liabilities. In the event that the pension plan is wound up and the Commission makes a declaration under subsection 83(1) of the Act, amounts guaranteed by the PBGF would be determined in accordance with subsections 34(5) and (6) of the Regulations. Consequently, the method of determining the PBGF liabilities and the PBGF assessment base under a hybrid plan should be consistent with the method identified under subsections 34(5) and (6). The fact that the past service and current service portions of the plan may be administered separately has no impact on the requirement to identify all plan liabilities and assets with respect to the Ontario beneficiaries.
- Q.** If I make a submission to a PCO staff person about a pension plan and that submission is marked "private and confidential", can it then be severed from the plan file when the file is made available to a plan member for inspection or when a member requests copies of plan information?
- A.** Indicating that a letter or document is "privileged", "private" and/or "confidential" when addressed to an Ontario government office (which is bound by Freedom of Information and Protection of Privacy "FOIPOP" legislation) does not make it so.
- Section 29 (1) of the PBA provides that pension plan documentation and information must be made available to a plan member, former member, a spouse of a member or former member, any other person entitled to pension benefits under the pension plan, an agent authorized in writing by any of the foregoing, or a trade union representing members of a pension plan.
- All documents filed with the PCO are generally considered to be available to the public, unless exempted by a provision of the FOIPOP Act. The Ministry of Finance's FOIPOP Co-ordinator makes the decision with respect to any access request under that legislation. The decision may be appealed to the Information and Privacy Commissioner who will determine whether a document will be released under the FOIPOP Act. Final appeal may be made to the courts.

Registrants filing documents who believe that confidentiality should be respected for other reasons, such as personal privacy, should indicate such on the face of the document.

Q. Which Annual Information Returns must be filed before the Superintendent will approve a wind-up report?

- A. All of the requirements of the PBA and Regulations must be complied with before the Superintendent can approve the wind-up report and authorize distribution of plan assets.

Accordingly, PCO staff will require that all Annual Information Returns up to the effective date of the wind up must be filed and payment of the applicable filing fees must be received by the PCO before the Superintendent will approve the wind-up report.

In *Compliance Assistance Guideline # 4, Revised* December 1990 (page 5) the filings required as part of the wind-up process are discussed in more detail.

Q. Does the five-year period for the transfer of the commuted value by the employer to a former member where the plan is underfunded apply to former members between age 55 and 65?

- A. A pension plan member who terminates employment before his or her normal retirement date may elect to receive the commuted value of his/her pension pursuant to the transfer rights in section 42 of the PBA. However, where the plan is underfunded, the full amount cannot be transferred because of the resulting funding shortfall. The employer may take up to five years to complete the transfer pursuant to subsection 19(7) of the Regulations, regardless of the age of the terminating plan member.

The funding shortfall problem can be overcome if the employer is prepared to contribute the amount necessary to make up the difference between the full commuted value of the pension benefit and the amount the employee can take from an underfunded plan when the employee terminates.

This may result in the retired member receiving an initial lump sum payment that is large enough to annuitize, and over the next five years pension payments which are too small to be used to purchase separate annuity contracts. Where the initial payment has been annuitized, the former member must use the subsequent small payments to purchase a life annuity, or transfer to a locked-in RRSP, or into a LIF.

Q. Section 49 of the PBA allows variation in the terms of payment of the pension to persons with disabilities. How does the PCO determine whether a plan member or former member has a disability that is likely to “shorten considerably the life expectancy” of that member or former member, in order to satisfy the requirements of that section?

- A. The question of whether a member or former member has a disability that is likely to “shorten considerably the life expectancy” of that member or former member is essentially a medical question. The plan administrator must be satisfied that the conditions imposed by s. 49 are being met.

Furthermore, a financial institution which holds a locked-in RRSP for a former pension plan member, must be satisfied by the written medical opinion of a doctor that such a mental or physical disability exists.

Q. An employer sponsoring a defined contribution plan is facing serious economic hardship, and is unable at this time to pay the employer’s contributions to the company pension plan. In order to avoid winding up the plan, the employer wants to temporarily suspend all employer and employee contributions for a defined period of time. Would such a plan amendment be permitted?

- A. No. Any amendment to a pension plan suspending contributions to the plan would contravene the funding rules in the PBA and Regulations since vesting continues to accrue although no contributions are made to the plan. Consequently, no amendment suspending contributions to the plan is permitted.

Q. May a pension plan restrict benefit improvements to those active, deferred, vested, and retired members who are union members?

- A. The PCO has registered many pension plans in which union membership is a condition of plan membership. In such a plan, union membership may be continued as a condition for eligibility to receive benefit improvements after active membership in the plan ceases (e.g., former members in retirement or those entitled to deferred pensions.)

Q. When a joint and survivor is waived, how is the commuted value of the new single life pension determined?

- A. Under the provision of s. 44, a pension must provide a survivor benefit upon death of a member during the joint lives of the member and the member’s spouse which shall not be less than 60% of the pension amount payable to the member during the joint lives of the member and the member’s spouse.

When this benefit is waived, the formula by which the new single life pension is determined, is not set out. Depending on the basis used for commutation, the commuted value of the new single life pension could be greater than that of a normal commuted value for someone who does not have a spouse at the date of retirement.

When a joint and survivor benefit is waived, the commuted value of the member's pension should be based on a single life, without regard for the existence of a spouse. If a plan wishes to provide otherwise, it must specifically so state in the provisions of the text.

Q. A consultant asks whether the consulting house can generate a computer version of PBA prescribed forms? This is expected to facilitate accurate completion and timely filing.

A. At this time, the PCO would not have any difficulty with firms inputting all requirements of most prescribed forms and reproducing these prescribed forms such that the contents and appearance of the form are virtually identical to the prescribed forms as they appear in the PBA.

The exception to this is the Annual Information Return which is pre-printed and supplied by the PCO to all plan sponsors or administrators.

PCO Conference on the BBS: New and Improved

Most *PCO Bulletin* readers are aware that the PCO uploaded its published policies to a public conference on an electronic bulletin board system (BBS) operated by CRS Online in April 1993. Shortly after, problems became apparent. Among the most irksome were problems associated with the index and text wrap-around which indicated formatting incompatibilities between the source documents and the software used by the BBS.

We sincerely regret any inconvenience these problems may have caused for subscribers.

In the meantime, we have learned much. We have corrected and improved the index and the policy file area. We also plan to expand the body of information on the BBS by making Commission tribunal decisions available in the spring of 1994. Therefore, we ask prospective subscribers to consider and subscribers to reassess the benefits of the BBS.

We remain committed to the BBS medium for the transmission to our stakeholders of time-sensitive information and all PCO policies and Commission tribunal decisions - in two convenient versions.

Improvements and Features

By mid January, subscribers accessing the BBS will notice the following improvements and features:

- a) an improved index format;
- b) key words and section references in index to facilitate file searches;
- c) updated and standardized policy content;
- d) standardized format; and
- e) policies available in two versions: WP 5.1 for DOS and ASCII.

BBS users will be able to download all PCO published policies and in future, all Commission tribunal decisions, in the version most suited to their computer hardware and software.

Users should note that all files in various areas of the PCO conference - the News area, the index and the files - are viewed on-line in ASCII version only. The reason for this is dictated by the software which operates the bulletin board system. This software, *PCBoard*, also has certain formatting characteristics which all PCO policies now meet.

Characteristics of the BBS Index of PCO Policies

Users are encouraged to familiarize themselves with the BBS index of published policies which appears in this issue of the *PCO Bulletin* in order to appreciate the topical organization of the index. The index is sorted in an alphanumeric sequence and has been developed with key words and subjects in mind. The key word search method ensures quick retrieval of policies and related material.

We have published a complete listing of PCO published policies, in the pages that follow, which simulates the on-line index. (Additional policies uploaded to the BBS will be listed in future *PCO Bulletin* issues.)

New Format for PCO Policies

The format of the policy that now appears on-screen is revised to meet the requirements of the BBS software. You will notice that the presentation of the policy in WP and ASCII versions differs slightly. (Please refer to examples of the policy presentation in *Administrative Practices* section, which begins on page 8 of the *PCO Bulletin*.)

Timely Information - PCO News

There will be greater reliance in future on this area of the BBS for disseminating information to stakeholders. On joining the conference users can access "news" and will find PCO announcements in reverse chronological order that is, with the most recent news items appearing on top. Users wishing to download news items should follow the instructions in the main menu.

BBS in the Future

PCO stakeholders will notice that the BBS and future issues of the *PCO Bulletin* will complement each other. For instance, the *PCO Bulletin* will include a list of all policies uploaded to the BBS in the intervening period. Announcements of a non-policy nature could also appear on the BBS News which may be followed-up by a fuller explanation in the *PCO Bulletin*.

We hope you are encouraged by what you see on the PCO's conference on the BBS in the coming months and welcome your comments. With proper maintenance, we expect to demonstrate that the BBS is an efficient and effective medium for disseminating pension information.

PCO POLICIES AVAILABLE ON AN ELECTRONIC BULLETIN BOARD (BBS)

Are you a BBS subscriber? Do you want to know more about the service? Would you like the PCO to host a workshop for BBS subscribers?

A subscription with CRS Online entitles the subscriber to access all public conferences including the PCO Conference. At this time, we are unable to identify those with a specific interest in the PCO Conference. We want to support you as much as possible and ask that you complete the questionnaire below, register as a subscriber or prospective subscriber and fax the information to Judith Chalmers, Senior Communications Officer at 416-314-0650.

On receipt, we will mail you a *BBS/PCO Conference Information Package*.

* * *

_____ I have been a subscriber to the PCO Conference on the BBS since _____ 1993/1994.
(Month)

_____ I am interested in becoming a subscriber and want to learn more.

_____ Please send me the BBS/PCO Conference Information Package.

_____ I would be interested in attending a half-day workshop for subscribers.

Name/Title _____

Company _____

Address _____

City _____

Postal Code _____

Phone _____

Fax _____

Index of PCO Policies on the BBS

!INDEX AS.EXE	** Self-extracting zip file containing an index of all PCO files in ASCII format	A200-850.EXE	POLICY: ADMINISTRATIVE EXPENSES - PBGF assessment - O. Reg. 708/87 s. 33 (Feb 1992 Bulletin 2/4 p. 11)
!POLASC01.EXE	** Self-extracting zip file containing all PCO files in ASCII format	A200-900.EXE	POLICY: ADMINISTRATIVE EXPENSES - expenses payable from pension fund (Sep 1990 Bulletin 1/3 p. 17)
!POLWP01.EXE	** Self-extracting zip file containing policies - A050-075 to I400-700 in Wordperfect v5.1 format	A300-100.EXE	POLICY: ADMINISTRATOR - role and responsibilities (May 1990 Bulletin 1/2 p. 8)
!POLWP02.EXE	** Self-extracting zip file containing policies - L050-500 to W100-450 in Wordperfect v5.1 format	A300-150.EXE	POLICY: ADMINISTRATOR - role and responsibilities (Oct 1992 Bulletin 3/2 p. 6)
A050-075.EXE	POLICY: ACTUARIAL REPORTS - change to actuarial review procedure (Dec 1992 Bulletin 3/3 p.11)	A300-300.EXE	POLICY: ADMINISTRATOR - insurance company not administrator for annuity contracts, PBA 1987 ss. 8(d) (May 1990 Bulletin 1/2 p. 14)
A050-100.EXE	POLICY: ACTUARIAL REPORTS - compliance with actuarial professional standards (March 1993 Bulletin 3/4 p. 2)	A300-400.EXE	POLICY: ADMINISTRATOR - c. 8(1)(e) is mandatory for MEPPs established by collective agreements or trust agreements, PCO decision effective June 26, 1991 (Nov 1991 Bulletin 2/3 p. 16)
A050-102.EXE	POLICY: ACTUARIAL REPORTS - actuarial assumption guidelines for final average plans - approval of actuarial reports (Feb 1990 Bulletin 1/1 p. 8)	A300-800.EXE	POLICY: ADMINISTRATOR - requirement to provide information to members (March 1991 Bulletin 2/1 p. 13)
A050-900.EXE	POLICY: ACTUARIAL REPORTS - requirements for submission of actuarial reports & cost certificates (July 1991 Bulletin 2/2 p. 9)	A300-801.EXE	POLICY: ADMINISTRATOR - requirement to make documents available on request, PBA 1987 s. 30 (July 1991 Bulletin 2/2 p. 26)
A200-100.EXE	POLICY: ADMINISTRATIVE EXPENSES - consulting and actuarial fees for bargaining purposes not payable from pension fund, PBA 1987 ss. 23(9) (July 1991 Bulletin 2/2 p. 10)	A350-500.EXE	POLICY: PLAN ADVISORY COMMITTEES (MEMBERS) - purpose (Feb 1990 Bulletin 1/1 p. 6)
A200-200.EXE	POLICY: ADMINISTRATIVE EXPENSES - payable from pension fund (July 1991 Bulletin 2/2 p. 10)	A400-200.EXE	POLICY: AMENDMENTS - challenge to an adverse amendment (Sep 1990 Bulletin 1/3 p. 17)
A200-400.EXE	POLICY: ADMINISTRATIVE EXPENSES - finders fee or insurance broker commission payable from pension fund PBA 1987 s. 22 (May 1990 Bulletin 1/2 p. 13)	A400-900.EXE	POLICY: AMENDMENTS - surplus withdrawal amendments PBA 1987 s. 79 (March 1993 Bulletin 3/4 p. 17)
A200-800.EXE	POLICY: ADMINISTRATIVE EXPENSES - payment on windup, PBA 1987 ss. 71(2) (May 1990 Bulletin 1/2 p. 13)	A500-100.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - fees due whether application of registration filed & late filing fees, PBA 1987 ss. 9(1) (July 1991 Bulletin 2/2 p. 11)

A500-105.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - deadlines for filing AIRs with fees PBA 1987 s. 21, s. 15 (Feb 1990 Bulletin 1/1 p. 7)	A700-100.EXE	POLICY: ASSETS - asset transfer on reorganization (Nov 1991 Bulletin 2/3 p. 15)
A500-106.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - filing deadlines for plans other than defined contribution plans (Mail distribution)	A700-126.EXE	POLICY: ASSETS - asset transfer - successor plans PBA s. 80 (Dec 1992 Bulletin 3/3 p. 11)
A500-150.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - forms (Feb 1990 Bulletin 1/1 p. 6)	A700-150.EXE	POLICY: ASSETS - notification of change of carrier (Feb 1990 Bulletin 1/1 p. 7)
A500-200.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - late fees (Nov 1991 Bulletin 2/3 p. 15)	A700-152.EXE	POLICY: ASSETS - types of asset transfers PBA s. 79-81 (Feb 1992 Bulletin 2/4 p. 10)
A500-225.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - new fees, effective Dec 17, 1992 O.Reg. 778/92 (March 1993 Bulletin 3/4 p. 10)	A700-200.EXE	POLICY: ASSETS - asset transfer resulting from sale of business - Policy Statement 2 July 28, 1988, 6 pp.
A500-250.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - Revenue Canada annual information return (Feb 1992 Bulletin 2/4 p. 7)	A700-300.EXE	POLICY: ASSETS - superintendent consent to transfer of assets (sale before 1/1/88, transfer after 1/1/88) (May 1990 Bulletin 1/2 p. 13)
A500-300.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - notice of revised annual information return - O.Reg. 402/91 effective July 19, 1991 (Nov 1991 Bulletin 2/3 p. 12)	B100-100.EXE	POLICY: BENEFITS - definition of bridge benefit (March 1991 Bulletin 2/1 p. 14)
A500-900.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - unsigned AIRs (May 1990 Bulletin 1/2 p. 5)	B100-125.EXE	POLICY: BENEFITS - garnishment of pensions in pay PBA s. 66 (March 1993 Bulletin 3/4 p. 13)
A600-600.EXE	POLICY: ANNUITIES - guaranteed annuity contracts O. Reg. 629/92, eff. Oct 9/92 (Dec 1992 Bulletin 3/3 p. 7)	B100-200.EXE	POLICY: BENEFITS - pregnancy and parental leave (July 1991 Bulletin 2/2 p. 4) revised by erratum published in (November 1991 Bulletin 2/3 p. 1)
A600-900.EXE	POLICY: ANNUITIES - fully-insured money purchase group annuity (Dec 1990 Bulletin 1/4 p. 10)	B100-202.EXE	POLICY: BENEFITS - pregnancy and parental leave - employee contributions (Feb 1992 Bulletin 2/4 p. 11)
A600-950.EXE	POLICY: ANNUITIES - mortality tables & sex discrimination O. Reg. 708/87 ss. 18(3) (Dec 1992 Bulletin 3/3, p. 17)	B100-204.EXE	POLICY: BENEFITS - pregnancy and parental leave governed by Employment Standards Amendment Act (Feb 1992 Bulletin 2/4 p. 11)
		B100-205.EXE	POLICY: BENEFITS - pregnancy and parental leave cannot be conditional (Feb 1992 Bulletin 2/4 p. 11)

B100-225.EXE	POLICY: BENEFITS - portability rights if vested but not locked in (March 1993 Bulletin 3/4 p. 17)	C200-100.EXE	POLICY: CONVERSION - from defined benefit to defined contribution - effective Aug 30, 1991 (Nov 1991 Bulletin 2/3 p. 13)
B100-250.EXE	POLICY: BENEFITS - improvement of benefits in on-going plans (July 1991 Bulletin 2/2 p. 10)	C200-150.EXE	POLICY: CONVERSION - defined contribution to defined benefit (May 1990 Bulletin 1/2 p. 13)
B100-300.EXE	POLICY: BENEFITS - value of deferred pension, PBA 1987 ss. 40(1) (July 1991 Bulletin 2/2 p. 10)	C200-700.EXE	POLICY: CONVERSION - past benefits - members option (Feb 1992 Bulletin 2/4 p. 11)
B100-800.EXE	POLICY: BENEFITS - same-sex spousal benefits - Leshner ruling explained (Dec 1992 Bulletin 3/3 p. 8)	D050-200.EXE	POLICY: DEADLINES - deadline for membership not acceptable (Sep 1990 Bulletin 1/3 p.11)
B100-900.EXE	POLICY: BENEFITS - transfer to locked-in RRSP may result in loss of rights (March 1993 Bulletin 3/4 p. 17)	D050-800.EXE	POLICY: DEADLINES - extension of deadline for funding in active defined benefit plans PBA 1987 s. 106, effective Dec 19/91 (Feb 1992 Bulletin 2/4 p. 10)
C100-100.EXE	POLICY: CLASS OF EMPLOYEE - clarification (formerly Interpretation Bulletin I, PBA s. 31-34 (Dec 1993 Bulletin 4/2 p. 12)	E050-050.EXE	POLICY: EARLY RETIREMENT WINDOWS - for applications received after March 26, 1992 (June 1992 Bulletin 3/1 p.11)
C100-300.EXE	POLICY: CLASS OF EMPLOYEE - class and eligibility PBA 1987 ss. 32(1) (Sep 1990 Bulletin 1/3 p. 11)	F100-150.EXE	POLICY: FINANCIAL STATEMENTS - CICA guideline for annual audited statements (Feb 1992 Bulletin 2/4 p. 7)
C100-650.EXE	POLICY: CLASS OF EMPLOYEE - individuals (Sep 1990 Bulletin 1/3 p. 11)	F100-300.EXE	POLICY: FINANCIAL STATEMENTS - master trust arrangements O. Reg 708/87 s. 72 (Mail distribution Sep 8, 1989)
C100-700.EXE	POLICY: CLASS OF EMPLOYEE - more advantageous pension benefits or ancillary benefits permitted PBA s. 5 (Sep 1990 Bulletin 1/3 p. 11)	F100-400.EXE	POLICY: FINANCIAL STATEMENTS - fund statements or plan statements O. Reg 708/87 s. 72 (May 1990 Bulletin 1/2 p. 14)
C100-800.EXE	POLICY: CLASS OF EMPLOYEE - requirements for full and part-time employees (Sep 1990 Bulletin 1/3 p. 11)	F100-401.EXE	POLICY: FINANCIAL STATEMENTS - revised filing requirements on financial statements O. Reg. 712/92, effective Nov 26, 1992 (March 1993 Bulletin 3/4 p. 14)
C100-801.EXE	POLICY: CLASS OF EMPLOYEE - part-time employees and YMPE test (May 1990 Bulletin 1/2 p. 14)	F800-050.EXE	POLICY: FUNDING OF PLANS - solvency funding & pension benefits guarantee fund - amendments to regulation, O. Reg. 712/92 only available in WordPerfect 5.1 (EXE) (March 1993 Bulletin 3/4 p. 4)
C100-890.EXE	POLICY: CLASS OF EMPLOYEE - seasonal workers (Sep 1990 Bulletin 1/3 p. 11)	F800-051.EXE	POLICY: FUNDING OF PLANS - impact of solvency funding (Mar 1993 Bulletin 3/4 p. 13)
C125-100.EXE	POLICY: COMMUTED VALUE - calculation in a continuing plan O. Reg 909 ss. 16(1) (Dec 1992 Bulletin 3/3 p. 7)		

F800-100.EXE	POLICY: FUNDING OF PLANS - contribution holidays for members; employee contributions, payroll deductions (Oct 1992 Bulletin 3/2 p. 14)	I200-300.EXE	POLICY: INTEREST - minimum and maximum rates (March 1991 Bulletin 2/1 p. 13)
F800-150.EXE	POLICY: FUNDING OF PLANS - collection of unremitted contributions PBA s. 59, s. 87, s. 109 and s. 110 (June 1992 Bulletin 3/1 p. 12)	I200-600.EXE	POLICY: INTEREST - credited interest O. Reg. 629/92, effective Oct 9, 1992 (Dec 1992 Bulletin 3/3 p. 7)
F800-300.EXE	POLICY: FUNDING OF PLANS - contributory and non-contributory pension plans (May 1990 Bulletin 1/2 p. 14)	I200-700.EXE	POLICY: INTEREST - on late AIR fees (Oct 1992 Bulletin 3/2 p. 14)
F800-400.EXE	POLICY: FUNDING OF PLANS - employer contributions based on RRSP contributions (Oct 1992 Bulletin 3/2 p. 7)	I300-200.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - compliance amendments required for Quebec members (Jul 1991 Bulletin 2/2 p. 5)
G100-100.EXE	POLICY: GRADUAL AND UNIFORM - age-related benefit formula, PBA ss. 11(1) & (4) (Dec 1993 Bulletin 4/2 p. 14)	I300-300.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - documents at PCO for plans in other provinces (Nov 1991 Bulletin 2/3 p.15)
G100-600.EXE	POLICY: GRADUAL AND UNIFORM - benefit accrual in defined benefit and defined contribution plans PBA 1987 s. 11 (May 1990 Bulletin 1/2 p. 7)	I300-400.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - reciprocal agreement - CAPSA 1968 document (3 p.)
G100-700.EXE	POLICY: GRADUAL AND UNIFORM - benefit accrual - application to MEPP PBA 1987 s. 11 (Dec 1990 Bulletin 1/4 p. 9)	I300-500.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - reciprocal agreement, CAPSA suggested changes (Nov 1991 Bulletin 2/3 p. 11)
I150-500.EXE	POLICY: INFORMATION - Freedom of Information & Protection of Privacy Act (FOIPOP) - how to obtain information (Feb 1990 Bulletin 1/1 p. 6 & updated)	I400-300.EXE	POLICY: INVESTMENT OF PENSION FUNDS - derivative instruments - futures and options (Sep 1990 Bulletin 1/3 p. 13)
I150-600.EXE	POLICY: INFORMATION - Freedom of Information & Protection of Privacy Act (FOIPOP): interim administrative practice - FOIPOP 1987 s. 17 (Feb 1990 Bulletin 1/1 p. 8)	I400-350.EXE	POLICY: INVESTMENT OF PENSION FUNDS - ethical investments (Feb 1992 Bulletin 2/4 p. 11)
I200-100.EXE	POLICY: INTEREST - average fund rate for employee contributions (Mar 1991 Bulletin 2/1 p. 13)	I400-500.EXE	POLICY: INVESTMENT OF PENSION FUNDS - letters of credit as collateral in securities lending, O. Reg. 708/87 ss. 73(b) (Sep 1990 Bulletin 1/3 p. 9)
I200-200.EXE	POLICY: INTEREST - crediting interest on employee contributions, O. Reg. 708/87 ss. 12(2) (March 1991 Bulletin 2/1 p. 13)	I400-600.EXE	POLICY: INVESTMENT OF PENSION FUNDS - prudence - PBA 1987, s. 23, s. 63, O. Reg. 708/87 s. 63 (May 1990 Bulletin 1/2 p. 11)

I400-700.EXE	POLICY: INVESTMENT OF PENSION FUNDS - securities investments O. Reg. 708/87 s. 75 (Dec 1990 Bulletin 1/4 p. 3)	L100-600.EXE	POLICY: LOCKING IN - self-directed RRSPs & home mortgages (Oct 1992 Bulletin 3/2 p. 5)
L050-500.EXE	POLICY: LIFE INCOME FUND - LIF explanation and tables for minimum & maximum withdrawal percentages, O. Reg. 909 s.18 and 19, Schedule 1 (Dec 1992 Bulletin 3/3 p. 1)	L100-700.EXE	POLICY: LOCKING IN - application of pre- and post-1987 vesting & locking-in rules (Oct 1992 Bulletin 3/2 p. 14)
L050-501.EXE	POLICY: LIFE INCOME FUND - amendments to the ITA (Canada) regulation & the effect on LIFs (March 1993 Bulletin 3/4 p. 1)	M100-200.EXE	POLICY: MEMBERSHIP - deadline for membership not acceptable (Sep 1990 Bulletin 1/3 p. 11)
L050-700.EXE	POLICY: LIFE INCOME FUND - spousal death benefit (March 1993 Bulletin 3/4 p. 16)	M100-500.EXE	POLICY: MEMBERSHIP - mandatory vs voluntary PBA 1987 s. 10 (May 1990 Bulletin 1/2 p. 13)
L050-900.EXE	POLICY: LIFE INCOME FUND - treatment of funds by other jurisdictions (March 1993 Bulletin 3/4 p. 17)	M100-501.EXE	POLICY: MEMBERSHIP - mandatory and voluntary - changes after effective date (Dec 1990 Bulletin 1/4 p. 10)
L100-075.EXE	POLICY: LOCKING IN - interest locked in (June 1992 Bulletin 3/1 p. 13)	M100-700.EXE	POLICY: MEMBERSHIP - no transfer on suspension of plan membership - PBA 1987 s. 64 (Feb 1990 Bulletin 1/1 p. 6)
L100-100.EXE	POLICY: LOCKING IN - locked-in RRSP can purchase annuity at age 55 (July 1991 Bulletin 2/2 p. 11)	M100-800.EXE	POLICY: MEMBERSHIP - students generally not eligible PBA 1987 s. 1 (May 1990 Bulletin 1/2 p. 14)
L100-125.EXE	POLICY: LOCKING IN - effect of legislation (June 1992 Bulletin 3/1 p. 6)	M200-150.EXE	POLICY: MERGER OF PLANS - general procedures for plan mergers PBA 1987 s. 82, effective Feb. 1, 1990 (May 1990 Bulletin 1/2 p. 6)
L100-150.EXE	POLICY: LOCKING IN - locked-in RRSP funds - annuities (Dec 1992 Bulletin 3/3 p. 17)	M200-151.EXE	POLICY: MERGER OF PLANS - merger policy, September 1993 (Published BBS - September 16, 1993; Dec 1993 Bulletin 4/2 p. 8)
L100-200.EXE	POLICY: LOCKING IN - locked-in RRSP cannot be transferred to a RRIF (also ref. life income fund) (Feb 1990 Bulletin 1/1 p. 6)	M900-100.EXE	POLICY: MULTI-EMPLOYER PENSION PLANS (MEPPs) - collection of contributions and delinquencies, PBA 1987 s. 56, s. 58 (May 1990 Bulletin 1/2 p. 8)
L100-300.EXE	POLICY: LOCKING IN - locking in of pension funds when member leaves the country (March 1991 Bulletin 2/1 p. 13)	N300-100.EXE	POLICY: NOTICE REQUIREMENTS - guideline - notice of wind up of pension plan, PBA ss 68(2), formerly Policy Statement I: Notice Requirements (Dec 1993 Bulletin 4/2 p. 15)
L100-400.EXE	POLICY: LOCKING IN - on termination (Feb 1990 Bulletin 1/1 p. 5)	O100-100.EXE	POLICY: ONE-PERSON PLANS - approaches and Revenue Canada considerations (Dec 1990 Bulletin 1/4 p. 8)
L100-500.EXE	POLICY: LOCKING IN - non-redeemable RRSP investment (Dec 1992 Bulletin 3/3 p. 17)		

P200-200.EXE POLICY: PENSION BENEFITS
GUARANTEE FUND (PBGF) -
| assessment and member fees
| (July 1991 Bulletin 2/2 p. 11)

P200-300.EXE POLICY: PENSION BENEFITS
GUARANTEE FUND (PBGF) -
| coverage and funding
| (March 1991 Bulletin 2/1 p. 16)

P200-850.EXE POLICY: PENSION BENEFITS
GUARANTEE FUND (PBGF) -
| assessment as administrative expense
| (Feb 1992 Bulletin 2/4 p. 11)

P300-250.EXE POLICY: PENSION COMMISSION OF
ONTARIO (PCO) PROCEDURES -
| 1) how to get assistance from the PCO
| (Feb 1990 Bulletin 1/1 p. 2,
| reprinted Feb 1992 Bulletin 2/4 p. 9)
| 2) telephone enquiries to the PCO
| (Dec 1992, Bulletin 3/3 p. 8)

P300-350.EXE POLICY: PENSION COMMISSION OF
ONTARIO (PCO) PROCEDURES -
| no civil collection by PCO
| (Jun 1992 Bulletin 3/1 p. 12)

P400-300.EXE POLICY: POOLED FUND CENTRAL
REGISTRY -
| description
| (Sep 1990 Bulletin 1/3 p. 12)

P400-500.EXE POLICY: POOLED FUND CENTRAL
REGISTRY -
| simplified filing procedure
| notice distributed effective Jul 25/89

R350-100.EXE POLICY: REFUND OF EMPLOYER
OVERPAYMENT -
| notice to members a necessary
| pre-condition
| (May 1990 Bulletin 1/2 p. 5,
| revised March 1993 Bulletin 3/4 p.15)

R400-100.EXE POLICY: REFUND OF CONTRI-
BUTIONS TO PLAN MEMBERS -
| applications to Commission - consent
| to a refund, PBA 1987 ss. 64(7)
| effective Aug 30, 1991
| (Nov 1991 Bulletin 2/3 p. 13)

R400-105.EXE POLICY: REFUND OF CONTRI-
BUTIONS TO PLAN MEMBERS -
| refund to active members
| PBA 1987 ss 64(2)
| (July 1991 Bulletin 2/2 p. 10)

R400-200.EXE POLICY: REFUND OF CONTRI-
BUTIONS TO PLAN MEMBERS -
| applications to Commission - funding
| deficiency, PBA 1987 ss. 64(7)
| (July 1991 Bulletin 2/2 p. 11)

R500-100.EXE POLICY: REGISTRATION -
| changing province of registration
| (Nov 1991 Bulletin 2/3 p. 15)

R500-200.EXE POLICY: REGISTRATION -
| preparing application for registration
| Published Feb 1990, Compliance
| Assistance Guideline No. 1

R500-250.EXE POLICY: REGISTRATION -
| guide to completing a pension plan
| document checklist, PBA s. 98
| Published Oct 1990, Compliance
| Assistance Guideline No. 5
| effective Nov 1, 1992

R500-301.EXE POLICY: REGISTRATION -
| pension plan document checklist, PCO
| form 03045(92) (8 pp.)
| only available on WordPerfect 5.1
| (EXE)
| effective Nov 1, 1992

R500-302.EXE POLICY: REGISTRATION -
| notice of revised document checklist
| (Oct 1992 Bulletin 3/2 p. 6)

R500-350.EXE POLICY: REGISTRATION -
| legal effect
| (Sep 1990 Bulletin 1/3 p. 5)

R600-600.EXE POLICY: RESTATED PLAN
DOCUMENTS -
| amendment, registration not confirmed
| (July 1991 Bulletin 2/2 p. 10)

R700-100.EXE POLICY: RETIREMENT -
| normal retirement date, PBA 1987 s. 36
| (March 1991 Bulletin 2/1 p. 14)

R700-200.EXE POLICY: RETIREMENT -
| mandatory retirement date,
| also ref. PBA 1987 ss. 36(3) and (4)
| (March 1991 Bulletin 2/1 p. 14)

R700-500.EXE POLICY: RETIREMENT -
| mandatory retirement
| (March 1991 Bulletin 2/1 p. 14)

S500-300.EXE POLICY: SPOUSAL RIGHTS -
| joint & survivor requirement & waiver
| (Feb 1990 Bulletin 1/1 p. 6)

S500-500.EXE	POLICY: SPOUSAL RIGHTS - marriage breakdown & pension credits (March 1993 Bulletin 3/4 p. 15)	S900-250.EXE	POLICY: SURPLUS - court applications - surplus entitlement in wound-up plans effective April 23 1992 (Oct 1992 Bulletin 3/2 p. 4)
S500-600.EXE	POLICY: SPOUSAL RIGHTS - additional options to spouse on marriage breakdown (July 1991 Bulletin 2/2 p. 11)	S900-500.EXE	POLICY: SURPLUS - distribution to employer on wind up PBA s. 78, 79 & O. Reg. 708 7a(1)(b) effective May 28 1992 (Oct 1992 Bulletin 3/2 p. 8)
S500-700.EXE	POLICY: SPOUSAL RIGHTS - options to spouse on marriage break down PBA 1987 ss. 52(5) (July 1991 Bulletin 2/2 p.11)	S900-550.EXE	POLICY: SURPLUS - procedures under ss. 7a(2) of O. Reg. 708/87 (grandfathering provision) O. Reg 743/91 ss. 7a(2) eff. Apr 23/92 (Oct 1992 Bulletin 3/2 p. 13)
S700-050.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - conflicts of interest & code of ethics (Feb 1990 Bulletin 1/1 p. 7)	S900-600.EXE	POLICY: SURPLUS - court & PCO procedure for application under ss. 7a(2)(c) - O. Reg. 708/87 effective Aug 30 1991 (Nov 1991 Bulletin 2/3 p. 12)
S700-051.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - conflict of interest requirement (Feb 1992 Bulletin 2/4 p. 7)	S900-700.EXE	POLICY: SURPLUS - access to surplus in on-going plans permitted by O. Reg. 708/87 ss. 7(c) effective July 27 1990 (Sep 1990 Bulletin 1/3 p. 6)
S700-100.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - guide to completing a SIP&G Compliance Assistance Guideline No. 3 effective May 1990	S900-800.EXE	POLICY: SURPLUS - attributable to employer/employees PBA ss. 78(2) & O. Reg. 909 ss. 28(5) effective June 14 1993 (Aug 1993 Bulletin 4/1 p. 27)
S700-250.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - confirmation or amendment - notification to PCO (Dec 1990 Bulletin 1/4 p. 11)	T500-300.EXE	POLICY: TRANSFER RIGHTS - fully-insured money purchase group annuity, PBA 1987 s. 43 (Dec 1990 Bulletin 1/4 p. 10)
S700-300.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - Income Tax Act regulations - foreign content change (Nov 1991 Bulletin 2/3 p. 7)	T500-500.EXE	POLICY: TRANSFER RIGHTS - timing of termination statement - O. Reg. 708/87 s. 37, 38 & 40 (May 1990 Bulletin 1/2 p. 14)
S700-350.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - filing of investment policy return (Sep 1990 Bulletin 1/3 p. 17)	T500-600.EXE	POLICY: TRANSFER RIGHTS - transfer commuted value to other plan PBA 1987 s. 43 (Dec 1990 Bulletin 1/4 p. 11)
S900-050.EXE	POLICY: SURPLUS - adequacy of surplus withdrawal application, ss. 22 (3) of O. Reg. 708/87 repealed effective Oct 9, 1992 (Dec 1992 Bulletin 3/3 p. 8)	T800-201.EXE	POLICY: TRANSFER VALUES - mortality tables for calculation - CIA recommendations (July 1991 Bulletin 2/2 p. 10)
		W100-100.EXE	POLICY: WIND UP - a guide to wind up of a pension plan Compliance Assistance Guideline No. 4 (revised Dec 1990)

W100-125.EXE POLICY: WIND UP -
| employer intention respecting surplus
| in a wind-up report
| (July 1991 Bulletin 2/2 p. 11)

W100-150.EXE POLICY: WIND UP -
| defined benefit plan -
| Superintendent's checklist for
| compliance on plan wind up
| only available on WordPerfect 5.1
| (EXE)
| effective June 6 1991

W100-151.EXE POLICY: WIND UP -
| defined contribution plan -
| Superintendent's checklist for
| compliance on plan wind up
| only available on WordPerfect 5.1
| (EXE)
| effective June 6 1991

W100-200.EXE POLICY: WIND UP -
| filing deadlines, O. Reg. 909 s. 64,
| O. Reg. 629/92, effective Oct 9, 1992
| (Dec 1992 Bulletin 3/3 p. 8)

W100-225.EXE POLICY: WIND UP -
| vesting, locking in & growing in on
| wind up
| (Oct 1992 Bulletin 3/2 p. 4)

W100-230.EXE POLICY: WIND UP -
| individual statement at wind up,
| O. Reg. 909 s. 28(2)(t), O. Reg. 629/92
| (Dec 1992 Bulletin 3/3 p. 7)

W100-275.EXE POLICY: WIND UP -
| plan with no members, PBA s. 68
| (June 1992 Bulletin 3/1 p. 12)

W100-301.EXE POLICY: WIND UP -
| notice of proposal for partial wind up
| PBA, ss. 68(2) & (3)
| effective June 24 1993
| (Aug 1993 Bulletin 4/1 p. 23)

W100-435.EXE POLICY: WIND UP -
| payment of immediate pensions
| (Feb 1992 Bulletin 2/4 p. 10)

W100-450.EXE POLICY: WIND UP -
| significant numbers of members
| PBA 1987 ss. 70(1)(d)
| (Sep 1990 Bulletin 1/3 p. 17)

Superintendent of Pensions - Notices and Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) *Sound Insight Limited Pension Plan for Executive Employees* (C-18819), August 18, 1993
- 2) *Pension Plan for Controlling Significant Shareholder Employees of Timberlea Packaging Inc.* (C-104188), August 19, 1993
- 3) *Westinghouse Canada Inc. Consolidated Pension Plan* (C-9356), August 23, 1993 (partial)
- 4) *Union Electric Supply Co. Limited Executive Pension Plan "B"* (C-23370), August 24, 1993
- 5) *Consolidated GenCorp Canada Inc. Hourly Pension Plan* (C-14498), amended September 1, 1993 (partial)
- 6) *Consolidated GenCorp Canada Inc. Salaried Pension Plan* (C-6895), amended September 1, 1993 (partial)
- 7) *Canadian Bird Equipment Limited Employees Pension Plan* (C-12574), September 1, 1993
- 8) *Retirement Income Plan for Salaried Employees of Savage Shoes Limited* (C-18831), September 27, 1993
- 9) *Pension Plan for Hourly Employees of Savage Shoes Limited* (C-17059), September 27, 1993
- 10) *The Pension Plan for Paja Group Inc.* (C-15016), October 20, 1993
- 11) *Revised Employees' Pension Plan for Employees of Matrix Steel Corp.* (C-19997), October 20, 1993
- 12) *The Pension Plan for Standard Optical Company Limited* (C-18078), October 20, 1993
- 13) *Imperial Optical Company Ltd. Employees Pension Plan* (C-17745), October 20, 1993
- 14) *Pension Plan for the Employees of O'Neill-Bernhardt Limited* (C-13683), October 20, 1993
- 15) *Retirement Plan for the Employees of Lomar Mechanical Corporation Limited* (C-103969), October 20, 1993
- 16) *Retirement Plan for the Employees of Steel City Truck Lines Limited* (C-101940), October 20, 1993

- 17) *Retirement Plan for the Employees of Delmar Contracting Limited* (C-8691), October 28, 1993
- 18) *Imperial Optical Company Ltd. and Subsidiary and Affiliated Companies Pension Plan* (C-8230), November 17, 1993

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA (wind-up orders), as follows (effective date of wind up and date of order indicated, respectively):

- 1) *The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955* (C-5906), (effective February 25, 1993, July 23, 1993)
- 2) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955* (C-5905), (effective February 25, 1993, July 23, 1993)
- 3) *Sketchley Cleaning Services Limited Employees Pension Plan* (C-15968), (effective January 15, 1992, August 12, 1993)
- 4) *Sketchley Cleaning Services Limited Corporate Pension Plan* (C-102999), (effective January 15, 1992, August 12, 1993)
- 5) *Creeds Limited Employees' Pension Plan* (C-6559), (effective November 9, 1990, August 12, 1993)
- 6) *Pension Plan for Hourly-Rated Employees of Provincial Crane Inc.* (C-102256), (effective December 6, 1991, August 12, 1993)
- 7) *Pension Plan for Salaried Employees of Provincial Crane Inc.* (C-102257), (effective December 31, 1989, August 12, 1993)
- 8) *Staff Pension Plan for Employees of R.B.P. (Canada) Limited* (C-16901), (effective December 31, 1990, August 12, 1993)
- 9) *Smith Brothers Inc. Pension Plan* (C-1114), (effective December 23, 1991, August 17, 1993)
- 10) *St. Lawrence Foods Corporation Pension Plan* (C-5475), (effective October 31, 1991, September 16, 1993)
- 11) *Bell Technical Services Inc. Retirement Plan for Salaried Employees* (C-101754), (effective November 4, 1991, September 16, 1993)
- 12) *Pension Plan for Employees of Richmond Bros. Insulation Inc.* (C-102967), (effective September 28, 1988, September 16, 1993)
- 13) *Van Dresser Limited Non-Contributory Pension Plan* (C-100753), (effective May 5, 1992, September 16, 1993)

- 14) *Van Dresser Limited Employees' Pension Plan (C-12548)*, (effective May 5, 1992, September 16, 1993)
- 15) *Retirement Plan for the Employees of Smart Turner Limited (C-11407)*, (effective June 16, 1992, September 16, 1993)
- 16) *Peter's Backyard Restaurant Ltd. Employees' Pension Plan (C-18342)*, (effective July 31, 1989, September 28, 1993)
- 17) *Canadian Bird Equipment Limited Employees Pension Plan (C-12574)*, (effective January 1, 1992, October 20, 1993)
- 18) *Union Electric Supply Co. Limited Executive Pension Plan "B" (C-23370)*, (effective January 13, 1993, October 28, 1993)
- 19) *Pension Plan for Controlling Significant Shareholder Employees of Timberlea Packaging Inc. (C-104188)*, (effective August 20, 1991, October 28, 1993)
- 20) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*, (effective March 31, 1991, October 28, 1993)

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1994 Commission Meeting Dates

The Pension Commission will convene on the following Thursdays in 1994:

January 27, February 24, March 24, April 28, May 26, June 23, July 21, August 25, September 22, October 20, November 17 and December 15, 1994.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Vice Chair
 Darcie L. Beggs
 M. David R. Brown
 Kathryn M. Bush
 Donald G. Collins
 Robert F. Nickerson
 Joyce A. Stephenson
 Monica J. Townson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Stelco Inc. Retirement Plan for Salaried Employees (C-6968)

Decision dated July 7, 1993 (PCOB, Vol. 4, Issue 1, August 1993) ordering the Superintendent to carry out the Proposed Order dated February 28, 1992, that the plan be partially wound up, directed to Stelco Inc. is under appeal. Two pre-hearing conference decisions, July 7 and November 30, 1992 (PCOB, Vol. 3, Issue 2, October 1992), (PCOB, Vol. 3, Issue 4, March 1993) respectively. Decision relating to Neil K. Veinot (PCOB, Vol. 4, Issue 1, August 1993).

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. requested hearings with respect to a Notice of Proposal to Make an Order on each of the above plans issued by the Superintendent of Pensions March 3, 1993 pursuant to s. 69 of the PBA that the plans be wound up in part effective September 27, 1991. A pre-hearing conference held October 1, 1993 joined the two hearings. Hearing dates to be set. Panel: M.J. Regan, Chair, K. Bush, D. Collins.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 regarding Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die on consent. Panel: E. Gillese, Chair, D. Beggs, D. Collins, R. Nickerson, J. Stephenson.

International Playing Card Company Limited Pension Plan for Bargaining Unit Employees (C-4609)

Application pursuant to ss. 8(2) of Reg. 909, R.R.O. 1990, as amended by O.R. 743/91 for the consent of the Commission to a payment of surplus to International Playing Card Company Limited. This application follows a hearing, before Mr. Justice Carter, adjourned October 21, 1992 until PCO consent is received. Ms. Gillese, presiding member, at the pre-hearing conference July 29, 1993 required further written submissions. Panel: M.J. Regan, Chair, K. Bush, D. Collins, J. Stephenson, M. Townson. Decision pending.

Western Star Trucks Incorporated Pension Plan for Non-Bargaining Employees (C-18086)

Application denied. Decision dated September 21, 1993 published in this issue of the *PCO Bulletin*. The application, heard March 25 and May 27, 1993, requested the consent of the Commission to the payment of surplus on plan wind up to Western Star Trucks Inc.

TIE/communications Canada Inc. Pension Plan for Employees (C-9884)

A pre-hearing conference is scheduled for December 15, 1993, before Ms. K. Bush, presiding member, regarding an application for Commission consent to the payment of surplus on wind up to TIE/communications Canada Inc.

Commission Decisions - Applications Approved Since June, 1993

Applications Approved under s. 8 of Reg. 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and ss. 78(1) of the PBA - Request for Consent to Payment of Surplus Pursuant to a Court Order

At the Commission meeting held July 29, 1993, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, to filing with the Court a consent to the payment of plan surplus as follows:

- a) ***The Contributory Pension Plan for Salaried Employees of Ivaco Inc. and its Subsidiary Companies and Divisions (C-10765)***

Payment of surplus attributable to the only Quebec member at the date of wind up of the Contributory Pension Plan for Salaried Employees of Ivaco Inc. and its Participating Subsidiary Companies and Divisions, Registration No. C-10765, to Ivaco Inc.

This consent will be filed in the Court pursuant to clause 8(2) of Reg. 909.

At the Commission meeting held September 16, 1993, the Commission consented pursuant to ss. 78(1) of the PBA and ss. 7a(2) of O. Reg. 708/87, as amended by O. Reg. 743/91,

to filing with the court a consent to the payment of plan surplus as follows:

- a) ***Pension Plan for Salaried Employees of Chemetron of Canada Limited (C-3117) - Application by Allegheny International Canada Limited***

Payment of surplus to Allegheny International Canada Limited from the Pension Plan for Salaried Employees of Chemetron of Canada Limited, (C-3117), in the amount of \$379,908 as at December 15, 1987 plus investment earnings thereon to the date of payment (estimated to be \$520,459 as at January 31, 1992).

The Commission will file this consent in the Court pursuant to ss. 8(2) of Regulation Reg. 909.

Applications under clause 8(1)(b) of Reg. 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and ss. 78(1) of the PBA - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held June 24, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990 as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- a) ***Pension Plan for Employees of TCI-Superior Division Mueller Canada Inc. (C-722) - Application by Tyco Laboratories of Canada Inc.***

Payment of surplus to Tyco Laboratories of Canada Inc. from the Pension Plan for Employees of TCI-Superior Division Mueller Canada Inc., (C-722), in the amount of \$565,858 as at June 30, 1992, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

- b) ***Revised Pension Plan for Employees of G.C. McDonald Supply Limited (C-2404)***

Payment of surplus to G.C. McDonald Supply Limited from the Revised Pension Plan for Employees of G.C. McDonald Supply Limited, (C-2404), in the amount of \$166,095 as at June 7, 1991, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held July 29, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Pension Plan for the Employees of Morgan Trust Company of Canada (C-21782)- Application by CIBC Trust Corporation

Payment of surplus to CIBC Trust Corporation from the Pension Plan for the Employees of Morgan Trust Company of Canada, (C-21782), in the amount of \$146,290 as at January 2, 1991 which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhanced benefits pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) Merrill Lynch Canada Inc. Pension Plan Number 15145 (C-100528)

Payment of surplus in the amount of \$71,671 as at May 29, 1987.

c) Merrill Lynch Canada Inc. Pension Plan Number 17685 (C-100545)

Payment of surplus in the amount of \$42,156 as at September 30, 1988.

d) Merrill Lynch Canada Inc. Pension Plan Number 17871 (C-100546)

Payment of surplus in the amount of \$64,047 as at September 30, 1988.

e) Merrill Lynch Canada Inc. Pension Plan Number 19261 (C-100565)

Payment of surplus in the amount of \$52,976 as at January 31, 1988.

At the Commission meeting held September 16, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) The Pension Plan for Senior Executive Employees of Walvik Investments Limited (C-16015)

Payment of surplus in the amount of \$121,400 as at December 1, 1992.

b) World Vision Canada Pension Plan for W.J. Newell (C-101896)

Payment of surplus in the amount of \$27,895 as at September 1, 1990.

c) Staff Pension Plan for Employees of Paul Sadlon Motors Incorporated (C-15891)

Payment of surplus in the amount of \$22,869 as at November 30, 1990 which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held October 28, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Pension Plan "A" for Executive Employees of Dewar Insulations Inc. (C-16335)

Payment of surplus in the amount of \$97,825 as at February 1, 1990.

Application Approved under ss. 78(1), PBA & clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91 and Request for Refund of Employee Contributions - ss.63(7) & (8) of the PBA

At the Commission meeting held June 24, 1993, the Commission consented pursuant to ss. 78(1) of the PBA & clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91 and ss. 63(7) and (8) of the PBA to the following:

a) Hartz Canada Inc. Pension Plan for Salaried Employees (C-13909)

1. pursuant to ss. 63(7) & (8) of the PBA to the refund of members' and former members' required contributions from the Hartz Canada Inc. Pension Plan for Salaried Employees, (C-13909), as at March 31, 1993 plus credited interest thereon to the date of payment, for members and former members with contributory benefits, in accordance with the surplus sharing agreement.

2. pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, to a payment of surplus to Hartz Canada Inc. from the Hartz Canada Inc. Pension Plan for Salaried Employees, (C-13909), in the amount of \$4,398,462 as at March 31, 1993 plus investment earnings thereon to the date of payment, which consent shall not be effective until the administra-

tor satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Approved under ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held June 24, 1993, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) *Pension Plan for Executive Employees of Regal Greetings & Gifts (C-11186) - Application by Federal Industries Consumer Group Inc.*

Refund of members' required contributions for Members from the Pension Plan for Executive Employees of Regal Greetings & Gifts, (C-11186), in the aggregate amount of \$91,200 as at December 31, 1990 plus credited interest thereon to the date of payment.

At the Commission meeting held July 29, 1993, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) *Pension Plan for the Employees of Distican Inc. (C-17916)*

Refund of certain senior executives (Class 1) members' required contributions in the amount of \$87,814 as at December 31, 1991 plus credited interest thereon to the date of payment.

At the Commission meeting held September 16, 1993, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) *Nelson Aggregate Co. Salaried Employees' Pension Plan (C-18241)*

Refund of \$49,551.51 as at January 1, 1993 plus investment earnings thereon to the date of payment.

b) *EM Plastic & Electric Products Limited Employees' Pension Plan (C-15052)*

Refund in an amount equal to the surplus allocated to these members and former members.

c) *The Pension Plan for The Society of Management Accountants of Ontario (C-104417)*

Refund of \$308,300 as at January 1, 1992 plus credited interest to the date of payment.

d) *Revised Pension Plan for Employees of Swenson and Son Limited (C-7372)*

Refund of \$42,323 as at February 28, 1991 plus credited interest to the date of payment.

Application Approved under ss. 78(4) of the PBA - Return of Employer Payments or Overpayments

At the Commission meeting held July 29, 1993, the Commission consented pursuant to ss. 78(4) of the PBA to the following:

a) *Pension Plan for the Employees of E.R. Carpenter of Canada Limited (C-101781)*

Refund of an overpayment of contributions in the amount of \$128,173.86 to E.R. Carpenter of Canada Limited from the Pension Plan for the Employees of E.R. Carpenter of Canada Limited, (C-101781).

Applications Approved under s. 105 and ss. 78(4) of the PBA - Extension of Time and Return of Overpayment

At the Commission meeting held September 16, 1993, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows.

a) *Pension Plan for Cooksville Plant Employees of Primeau Argo Block (C-101298) - Application by ESSROC Canada Inc. (formerly Lake Ontario Cement Limited)*

i) pursuant to s. 105 of the PBA, to extend the time limit for filing an application for the refund of an overpayment in the amount of \$7,404.11; and

ii) pursuant to ss. 78(4) of the PBA, to the refund of an overpayment in the amount of \$7,404.11 to ESSROC Canada Inc. (formerly Lake Ontario Cement Limited) from the Pension Plan for Cooksville Plant Employees of Primeau Argo Block, (C-101298).

b) *Pension Plan for Transport Division Hourly Employees of Primeau Argo Block (C-101300) - Application by ESSROC Canada Inc. (formerly Lake Ontario Cement Limited)*

i) pursuant to s. 105 of the PBA, to extend the time limit for filing an application for the refund of an overpayment in the amount of \$3,195.18; and

ii) pursuant to ss. 78(4) of the PBA, to the refund of an overpayment in the amount of \$3,195.18 to ESSROC Canada Inc. (formerly Lake Ontario Cement Limited) from the Pension Plan for Transport Division Hourly Employees of Primeau Argo Block, (C-101300).

Pension Benefits Guarantee Fund ("PBGF")

On July 29, 1993, the Commission, pursuant to ss. 90(1) of the PBA, issued Notices of Proposal to make a Declaration pursuant to ss. 83(1) of the PBA that the PBGF applies to the following pension plans:

- a) *Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited (C-14720)*
- b) *Pension Plan for Local Union 412, Hotel and Restaurants Employees and Bartenders International Union (C-14721) - Re: Hiawathaland Hotels Limited*
- c) *Pension Plan for Hourly Rated Employees of Jaeger Canada Equipment Ltd. (C-15969)*
- d) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905)*

On July 29, 1993, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans:

- a) *The Welles Corporation Limited C.A.W. Pension Plan (C-100807)*
- b) *Pension Plan (A) for Full-Time Salaried Employees Exclusive of Those Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15118)*
- c) *Pension Plan (C) for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15119)*

On July 29, 1993, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, authorized an interim allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for pensions determined under s. 34 of the Reg. Any money not required to provide such benefits shall be returned to the PBGF.

- a) *Pension Plan (A) for Full-Time Salaried Employees Exclusive of Those Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15118)*

- (a) payments not to exceed a total of \$20,000 in respect of
 - (i) pensions provided under the Pension Plan for the period from April 12, 1993 to July 29, 1993, and
 - (ii) pensions provided to members or former members for the period, if any, between the date each was eligible to receive a pension and the date on which each elected to begin receiving a pension; and,

- (b) monthly payments not to exceed \$5,000.

- b) *Pension Plan (C) for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15119)*

- (1) payments not to exceed a total of \$200,000 in respect of
 - (i) pensions provided under the Pension Plan for the period from April 12, 1993 to July 29, 1993, and
 - (ii) pensions provided to members or former members for the period, if any, between the date each was eligible to receive a pension and the date on which each elected to begin receiving a pension; and,
- (b) monthly payments not to exceed \$60,000.

On September 16, 1993, the Commission, pursuant to ss. 90(1) of the PBA, issued a Notice of Proposal to Make a Declaration pursuant to s. 83 of the PBA that the PBGF applies to the following pension plan:

- a) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*

On September 16, 1993, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans:

- a) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905)*
- b) *Pension Plan for Hourly Rated Employees of Jaeger Canada Equipment Ltd. (C-15969)*
- c) *Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited (C-14720)*
- d) *Pension Plan for Local Union 412, Hotel and Restaurants Employees and Bartenders International Union (C-14721) - Re: Hiawathaland Hotels Limited*

On September 16, 1993, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, allocated from the PBGF the amount of (identified below in brackets) plus interest at the rate of 9% from March 31, 1993 to the date of payment to be paid to the following plans:

- a) *Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited (C-14720) (\$14,514)*
- b) *Pension Plan for Local Union 412, Hotel and Restaurants Employees and Bartenders International Union (C-14721) - Re: Hiawathaland Hotels Limited (\$59,822)*

Decisions

IN THE MATTER OF an Application by Western Star Trucks Inc. to the Pension Commission of Ontario for payment of surplus funds on plan wind up of Western Star Trucks Inc. Pension Plan for Non-bargaining Employees, Ontario registration number C-18086

Heard: March 25, 1993 and May 27, 1993
Toronto, Ontario

Before: M. Joseph Regan, Chair
Eileen E. Gillese, Vice Chair
Darcie L. Beggs
M. David R. Brown
Monica J. Townson

Reasons for Decision

Nature of the Application

Western Star Trucks Inc. ("the Applicant") applied to the Pension Commission of Ontario ("the Commission") for consent to a payment to it of surplus funds arising on the wind up of Western Star Trucks Inc. Pension Plan for Non-Bargaining Employees, Ontario registration no. C-18086 ("the Plan").

The Applicant sought payment of surplus funds in the amount of \$2,761,200, as at June 30, 1992, out of a total surplus of \$3,651,000, as at June 30, 1992, plus investment earnings thereon to the date of payment. The balance of the surplus funds is to be used for benefit enhancement for Plan members and former members.

This application was brought pursuant to subsections 78 (1) and (2) and clause 79(3)(b) of the Pension Benefits Act, R.S.O. 1990 ("the Act") and clause 8(1)(b) and subs. 25 (1) of Reg. 909, R.R.O., 1990, as amended ("the Regulations"). (Clause 8(1)(b) was formerly s. 7a(1)(b) of regulation 708/87.) For ease of reference, those legislative provisions are set out now.

78. (1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.
- (2) An employer who applies to the Commission for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to, ...
79. (3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless, ...
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan; ...
8. (1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless, ...
- (b) the payment is to be made to an employer with the written agreement of,
- (i) the employer,
 - (ii) the collective bargaining agent of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
 - (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

25. (1) The following information is prescribed for the purposes of a notice respecting an application under subsection 78(2) of the Act: ...
 3. The surplus attributable to employee and employer contributions...
 6. The contractual authority for surplus withdrawals...

When the hearing commenced on March 25, 1993, the following numbers of consents to the application had been received.

	No. of Notices Issued	No. of Consents
Active Members	159	151 (95%)
Former Members: Pensioners & Deferreds	165	123 (75%)

However, between the first and second day of hearing, at least 17 Plan members wrote to the Commission to withdraw their consents. Of the 17, 16 were deferreds and one was an active plan member. As can be seen by the fact that the consents are given by individuals and not by a collective bargaining agent, there is no union acting on behalf of the employees. Those members opposing the application were unrepresented by counsel but a number were present and took part in the hearing.

History and Background of the Plan

In this section, the relevant aspects of the Plan history will be outlined. However, two points should be made at the outset. First, the Plan has a very tortuous corporate existence because it, and its predecessors, have been through a series of amalgamations, separations and conversions. Second, we understand from the Applicant that it was unable to locate complete documentation for the Plan and, as a result, the Commission had to decide this matter without the benefit of a complete set of Plan documentation.

1. Plan C-2399

Western Star Trucks employees were originally part of the White Trucks, a division of White Motor Corp. of Canada Retirement Plan, Quebec registration No. C- 2399, ("Plan C-2399").

Plan C-2399 was established in November of 1951 and was funded by group annuity policy G.P. 579 with Confederation Life. That policy was surrendered on April 1, 1966 and the value of the annuity was transferred to deposit administration policy G.P. 72088, also with Confederation Life.

The relevant provisions in respect of surplus entitlement, as contained in the April 1, 1966 text of Plan C-2399, are as follows.

- s. 20.02 The Company intends that this shall be a permanent Plan for the exclusive benefit of its Members...
- s. 21.2 Upon the termination of the Plan ... the Plan Administrator ... shall provide for an equitable allocation of the funds solely to the Members, remaining in the Plan at the date of termination.

2. Plan C-877

Effective January 1, 1975, the assets and liabilities in respect of White Trucks, a division of White Motor Corporation of Canada, were transferred from Plan C-2399 to the Cockshutt Farm Equipment of Canada Limited Pension Plan, Ontario registration No. C-877 ("the Cockshutt Plan C-877"). Apparently, there were a number of other amalgamations or transfers or the like to Plan C-2399 between 1966 and 1975 but there is no reliable information available on the same.

Also effective January 1, 1975, the assets and liabilities of the White Western Star Division Pension Plan were transferred to the Cockshutt Plan C-877. The White Western Star Division Pension Plan had not been registered with any provincial pension body as the members were employed in British Columbia.

There is no pension plan documentation available for the White Western Star Division Pension Plan. The known relevant surplus provisions for Plan C- 2399 are set out in the immediately preceding section.

At the time of the transfer of assets and liabilities from the two plans to the Cockshutt Plan C-877, there was in effect a February 1962 plan text for the Cockshutt Plan C-877. The plan text contained no express provisions respecting entitlement to surplus on plan wind up. There were, however, the following provisions.

- s. 6.3 The Employer shall have no right, title or interest in the contributions made by it to the Trustee and no part of the Fund shall revert to the Employer.
- s. 7.1 The Employer reserves the right to amend or terminate this Plan at any time. The withdrawal or elimination of some (but not all) employees from the Plan shall not constitute a termination of the Plan, which shall continue to exist for the benefit of other employees remaining in or subsequently brought under the Plan ...

After receiving the transfers from Plan C-2399 and the White Western Star Division Pension Plan, the Cockshutt Plan C-877 changed its name to White Motor Corporation of Canada Limited's Pension Plan for Salaried and Hourly Non-Bargaining Employees, Ontario registration No. C-877 ("Plan C-877").

The pension plan text for Plan C-877, which was effective January 1, 1975, provided that:

- s. 15.06 If the Plan, as the same relates to the employees of an Employer, should be terminated, any assets attributable to Employer contributions on behalf of said employees remaining after the satisfaction of all liabilities of the plan to the participants and members of said employer and their beneficiaries shall be distributed to said employer.
- s. 19.03 Except as provided in Section 15.05, under no circumstances shall any funds contributed to the Trust Fund or any assets of the Trust Fund ever revert to, or be used or enjoyed by, the Employer nor shall any funds or assets ever be used other than for the benefit of Participants, members or their beneficiaries.

It would appear that the reference in s.19.03 to s.15.05 is a patent error and ought to be read as referring to s.15.06.

3. Plan C-18086

A number of complicated changes took place in respect of the structure of the corporation between 1975 and 1981, which changes do not need to be recounted here. In 1981, the Plan was established as Plan C-18086; it assumed the assets and liabilities in respect of the truck division members transferred from Plan C-877.

The relevant surplus entitlement provisions for the Plan (i.e. Plan C-18086), at its inception in 1981, were as follows.

- s. 14.01 The Company expressly reserves the right to amend the Plan, provided, however, that no amendment shall diminish or adversely affect any accrued interest of [sic] benefit of Participants or Members or their Beneficiaries. A permitted amendment shall become effective subject to approval of applicable pension benefits legislation as of the effective date designated by the amendment.
- s. 15.06 If the Plan, as the same relates to the employees of the Employer, should be terminated, any assets attributable to Employer contributions on behalf of said employees remaining after the satisfaction of all liabilities of the Plan to the Participants and Members of said Employer and their Beneficiaries shall be distributed to said Employer.
- s. 19.01 The Plan and Trust are created for the exclusive benefit of the employees of the Employer and their Beneficiaries.
- s. 19.03 Except as provided by Section 15.06, under no circumstances shall any funds contributed to the trust fund or any assets of the trust fund ever revert to, or be used or enjoyed by, the employer nor shall any funds or assets ever be used other than for the benefit of participants, members or their beneficiaries.

The text of the Plan was revised and restated January 1, 1985.

The following provisions are relevant.

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- s. 13.08 If the Plan, as the same relates to the Employees of the Employer or of an Associated Company, should be terminated, any assets remaining after satisfaction of all liabilities of the Plan to Members of the Employer or an Associated Company and their Beneficiaries shall be distributed to the Employer or to the Associated Company.
 - s. 14.01 The Company expressly reserves the right to amend the plan, provided, however, that no amendment shall diminish or adversely affect any accrued interest or [sic] benefit of Participant or Members or their Beneficiaries unless such amendment is required in order to comply with the requirements of a governmental authority having jurisdiction over the Plan. A permitted amendment shall become effective subject to approval of applicable pension benefits and taxation legislation as of the effective date designated by the amendment.
 - s. 15.01 The Plan and Trust are created for the exclusive benefit of Members and their Beneficiaries.
 - s. 15.03 Subject to the prior approval of the appropriate pension supervisory authority or authorities the Employer may receive a refund of surplus assets of the Trust Fund.

Plan C-18086, as amended and restated effective January 1, 1988, provides that surplus should revert to the Applicant on Plan wind up.

- s.14.08 If the Plan should be terminated, any assets remaining after the satisfaction of all liabilities for benefits promised under the terms of the Plan belong to the employer and shall be distributed to the Employer.

4. Relevant Financial History

The Commission had very incomplete financial information. The information we had is set out as it is relevant both to the Plan's history and, as will be seen, to the resolution of the legal issues that arise in the Application.

An actuarial valuation of Plan C-2399 as at January 1, 1974 on an on-going basis, revealed that Plan C-2399 had an actuarial surplus of \$305,408 on assets of \$2.66 million. It is unclear whether surplus assets were transferred from Plan C-2399 to the Cockshutt Plan C-877; it is the Applicant's contention that only sufficient assets to cover liabilities were transferred.

The Applicant took contribution holidays in the years 1966 - 1970 inclusive and 1971- 1974 inclusive in respect of Plan C-2399.

According to the first actuarial valuation filed with the Pension Commission of Ontario for the Plan (i.e. Plan C-18086), the Plan had an unfunded going concern liability of \$80,400 on assets of \$7,535,000 as at January 1, 1982. It is unknown whether an actuarial valuation on a wind up basis would have shown a surplus.

Between the time of the Plan's inception in 1981 and the effective date of wind up of June 30, 1992, the Applicant took contribution holidays in all years but two, those years being 1982 and 1987. In 1982, the Applicant made an employer contribution of \$265,400 and we understand that an employer contribution of \$186,000 was made in 1987, for a total employer contribution of \$451,400. The Annual Information Return for 1987 was returned with no figures in the "employer contribution" line. The figure of \$186,000 was inserted by the staff of the Commission with the notation of "as per telephone conversation". Whether the employer contribution in 1987 was made does not need to be resolved in light of the conclusions we reach on the main issues.

The surplus used for contribution holidays in the same time period (i.e. 1981 - 1992) was \$2,654,956. The employees contributions over the same time period amounted to \$1,735,199.

In 1985 the Applicant withdrew surplus in the amount of \$2,813,000 from the Plan. At that time, the actuary estimated that 20.9% of the surplus was related to employee contributions.

We have no information as to payments out of the Plan over the period 1981 - 1992.

The Issues

The Act precludes the Commission from consenting to the application unless the conditions contained in clauses (a) through (d) of subsection 79(3) have been met. In legal terms, the requirements contained in each of the clauses in

subsection 79(3) are statutory preconditions that must be met before the Commission is entitled to give its approval to surplus withdrawal applications. It is up to the Applicant to demonstrate to the Commission that each of those statutory preconditions has been met.

The Commission is satisfied that clauses (a) and (c) of subs. 79 (3) have been met. At issue is whether clauses (b) and (d) have been met. As our decision turns primarily on whether the Applicant has satisfied clause 79(3)(d), we will deal with that issue first.

Issue #1 Has the Applicant met the requirements of clause 79(3)(d)?

Clause 79(3)(d) of the Act, set out above in the first part of our reasons for decision, requires the Applicant to have complied with “all other requirements prescribed” under the Act. The only matter to be decided by the Commission in determining whether the Applicant satisfies clause 79(3)(d) is whether the notice transmitted by the Applicant, as required by subsection 78(2) of the Act, was adequate.

Subsection 78(2) requires an employer making application to the Commission for withdrawal of surplus pension funds to transmit notice of the application to specified individuals and groups. The notice that the Applicant transmitted in accordance with subsection 78(2) was defective in two ways. First, the notice failed to meet the surplus attribution requirement contained in subs. 25(1) of the Regulations; second, although the notice disclosed the existence of Plan C-2399, it did not disclose the terms of the surplus entitlement provisions therein.

The Applicant argues that, for a variety of reasons, both defects ought to be excused. The first argument can be generally termed the “fairness” argument. In accordance with subs. 25(2) of the Regulations, the Applicant submitted a copy of the notice to the Superintendent of Pensions for the Province of Ontario (“the Superintendent”) before it was transmitted. The Superintendent advised the Applicant that the notice was acceptable. The Applicant’s position is that it relied upon the Superintendent’s advice and for the Commission to now find the notice defective so that it would have to recommence the application process would be unfair; in effect, the argument is that the Commission is estopped from denying the validity of the notice in light of the Superintendent’s advice and the reliance of the Applicant thereon.

We cannot accept this argument. Estoppel does not lie against the Crown, including a tribunal such as the Commission. The Commission cannot simply accept that the notice is valid because the Superintendent said so at a different, far earlier point in the proceedings. It must go on and find, for itself, that the notice and all other legislated requirements have been met. To do otherwise would be in breach of the Commission’s obligations under subs. 79(3).

Because this fairness argument has been made by others in recent months, we will take this opportunity to elaborate. Obviously, the Commission does not want to cause uncertainty in proceedings before it nor does it wish to cause pension funds or employers to incur needless expense; it would not lightly find a notice to be invalid which the Superintendent had advised was adequate. However, it is clear that subs. 79(3) requires the Commission to independently assess the validity of the notice.

A functional approach leads to the same conclusion. The Superintendent is merely required, by subs. 25(2) of the Regulations, to advise, at a preliminary stage of the proceedings, as to the adequacy of the notice. The Commission, on the other hand, makes a final decision based in part on the validity of the notice and it makes the determination at the end of the proceedings which often have revealed much information that was unknown at the time the notice was provided to the Superintendent.

Moreover, the Commission’s role in respect of surplus withdrawal applications is that of a fiduciary. The Commission must independently determine whether the Applicant has satisfied all of the requirements of the legislation and if the Commission comes to the view that the notice is not adequate, knowing that adequate notice is a legislated requirement, it cannot consent to such an application. Obviously, we would not lightly come to such a view. But we cannot accept that we are not to even undertake such a review because of “unfairness”. We must discharge all our fiduciary obligations including a determination that proper notice was given. Thus, we must determine whether the two defects in the notice in this application are such that they invalidate the notice.

Subs. 25(1) of the Regulations is clear: it requires a notice transmitted pursuant to subs. 78(2) of the Act to set out the surplus attributable to employee and employer contributions. The notice did not do this. Instead, it contains the following assertion:

“There is no standard actuarial method of calculating the amount of surplus attributable to employee and employer contributions. In particular, this Pension Plan has been through a series of amalgamation, separations and conversions since inception. In addition, for part of the period the Plan was funded through an insured

group annuity contract. The financial data and impact of each of these transactions and changes is not available to permit a calculation of surplus allocation to employee contributions.”

Let us accept, for the moment, the assertion that it was not possible to provide a surplus attribution on the notice because of inadequate and incomplete information. Can the Commission accept, as valid, a notice which does not meet the explicit requirements of the Regulations? No, it cannot. The Commission is a creature of statute. Impossibility is something a court can deal with by declaring a regulation or part thereof invalid; the Commission has no such powers. Nor should it. It is obvious that if employees think that a large proportion of the surplus in a plan is attributable to their contributions they may act differently than if they think that little of their money has gone towards creation of the surplus. Surplus attribution is a very important part of the notice; to omit it is to strike at the substance of the notice and not merely to omit some procedural nicety. A notice which does not give surplus attribution information is materially defective and in breach of the Regulations. That defect alone precludes us from approving the application.

But we wish to comment further. We are very troubled by the assertion that because no “standard” actuarial method of calculating surplus attribution exists, no information on surplus attribution was given. Is the fact that there is no “standard” actuarial method an excuse for failing to meet the requirements of the regulation? Subs. 25(1) does not stipulate that a “standard” method be used but only that attribution be given. Could not the actuary have used a “reasonable” method instead? Surely there are ways to give some information that would meet the spirit of the legislative requirement and not cause an actuary to breach his or her professional standards. Would this information on the notice have made a difference to the number of consents obtained by the Applicant?

Thankfully, the Commission need not answer questions such as those. The notice is a statutory precondition to the exercise of our powers under subs. 79(3); it is defective in a material way and we cannot approve the application.

We would add that we find the notice to be defective in another way, that being a failure to disclose the surplus entitlement provisions of Plan C-2399, which provisions appear to give clear entitlement to surplus to the plan members. Both subs. 25(1)(6) of the Regulations and the common law require that the notice contain all material information. That provision appears to be material but is missing.

In recognition of this defect, the Applicant did offer to provide all the additional information in a new notice and the notice would state that the recipient of the notice could revoke his/her previous consent. In light of the other problems with the notice, that is not an acceptable alternative. A new and complete notice would be required before we could find that the requirements of subs. 79(3)(d) have been met. Only such proper notice will enable us to accept that the consents obtained pursuant to s.8 of the Regulations were valid.

Issue #2 Has the Applicant met the requirements of clause 79(3)(b)?

As can be seen above in “History and Background of the Plan, Part 3, Plan C- 18086”, s. 14.08 provides for reversion of surplus to the Applicant on Plan wind up. The Applicant argues that the Commission is to consider only s. 14.08 and that therefore it meets the requirements of clause 79(3)(b). That is, the Applicant would have the Commission rely on the current Plan text alone and not engage in a review of the complete plan documentation to ensure that the current plan provisions are valid. It argues that the Commission is either actually limited to an examination of the most current Plan provisions in determining whether the requirements of clause 79(3)(b) have been met or that the Commission ought to so limit its examination.

If we accept the Applicant’s position, then it is clear that it has met the requirements of clause 79(3)(b). However, we do not accept the Applicant’s contention.

The Applicant’s position is founded on two arguments. First, it says that the case of Otis Canada Inc. v. Superintendent of Pensions for Ontario, (1991) 2 O.R.(3d) 737 (Ont. Court, General Division) limits the Commission to an examination of current plan documentation alone. Second, the Applicant submits that the whole scheme of s.8(1)(b) of the Regulations is to encourage settlement of disputes regarding surplus ownership without the need for recourse to the courts for determinations based on narrow and technical grounds. Just as the Commission cannot second guess a court determination of ownership, so the argument runs, it ought not to second guess the “informed decision of members obtained by the means prescribed by the legislation as a substitute for a court order.”

The Commission does not feel bound by the words of Madam Justice Corbett in the Otis case for the following reasons. The Otis case says that the Commission is to refer to the most current plan provisions only “in the first instance”. If those words are to have any meaning, it must be that if anything suggests to the Commission that the most current plan provisions may not be valid then the Commission is to look behind them. Thus, the Otis case does not bar the Commission from looking behind current plan provisions to truly determine whether the “pension plan provides for payment of surplus to the employer”.

In any event, there are a number of cases that have been decided in the Ontario Court, General Division which affirm that the courts look to the Commission to perform a thorough analysis of plan documentation when determining whether subsection 79(3)(b) has been met. See, for example, *Sherwood Communications Group Ltd. v. The Canada Trust Co.* (1992), 33 A.C.W.S. (3d) 1152 and other such cases in which applications for declarations as to surplus entitlement before the court have been adjourned so that the Commission can first make such a determination. With this diversity of view at the same level of court, it cannot be said that the Commission is bound to follow the view that would bar us from considering anything but the most current plan provisions.

The fiduciary nature of the Commission's role also makes it incumbent upon the Commission to look behind the current Plan text if there is any question as to the validity of the current provisions. To do otherwise would be to fail in its obligations to protect the interests of all parties to the pension plan.

Finally, the Commission is the body in the province with expertise in pension matters and to skirt these types of issues would be an abrogation of the function invested in it by the legislation. It is not only the pension community but indeed the courts which are entitled to look to the Commission for a proper fulfilment of its functions.

We turn to the second of the Applicant's arguments on this point. If sufficient numbers of members and former members in categories 8(1)(b)(i) and (ii) consent, can/should/must the Commission change the way in which it deals with clause 79(3)(b)? That is, instead of tracking through the plan documentation to ensure that the current plan provisions are valid, should the Commission accept that such provisions are valid on the basis that those consenting to the application are content with the provisions?

The answer to this argument is simple. The passage of s. 8 of the Regulations cannot change the requirements of the Act. Subsection 79(3) is still in place. Therefore, the Commission must still ensure that clause 79(3)(b) has been met and that the provisions in the Plan providing for surplus reversion to the Applicant are valid. That said, the degree of scrutiny given to plan documentation changes with each case. In this case, there is a dispute, the dissident employees have no legal representation, there is no union representing plan members and there is a failure to meet the requirements of the legislation in respect of the notice. The Commission, in such circumstances, must be more stringent in its review than it would be if there were no dispute or if the members were represented.

Thus, we turn to a consideration of whether the Plan, considered in its entirety, provides for surplus reversion to the Applicant. In effect, we must determine whether s. 14.08 of the current plan text is valid. In light of our findings that the notice is invalid and the application must fail for that reason, we technically do not have to deal with this issue. However, in fairness to the Applicant, we wish to draw to its attention the difficulties we find with the validity of s. 14.08 so that the Applicant is not left with the mistaken impression that issuance of an appropriately worded new notice followed by collection of an adequate number of consents will virtually automatically lead to a successful application.

The Applicant asks that we treat the Plan as being established in 1981 despite there being a transfer of assets and liabilities from Plan C-877 to the Plan and despite the fact that employees covered by Plan C-877 were transferred to the Plan for coverage. The Applicant's view is that the plans that ante-date 1981 are irrelevant because the funds that were transferred cannot be traced. The funds cannot be traced, it is argued, because there was an actuarial deficit shortly after the inception of the Plan.

We do not accept that the Plan was effectively begun in 1981. It matters not whether the assets are traceable or whether the Plan was in a deficit position at the time of its inception. The Plan covered employees that had been covered by the predecessor plan C- 877, therefore the Plan was a successor plan and its terms have to be seen to carry on from the predecessor plans which fed into it. This view is borne out by the successor employer provisions in s. 81 of the Act and the equivalent provisions in the predecessor legislation.

We turn therefore to a consideration of the plan texts that antedate the Plan. Section 15.06 of Plan C-877 purports to allow assets attributable to employer contributions not used for the satisfaction of liabilities to revert on plan termination. But it is not clear that s.15.06 is valid given the terms of the three plans which were merged to create it. S. 6.3 of the Cockshutt Plan C-877 stipulated that the employer was to have no interest in the fund whatsoever; Plan C-2399 contained "exclusive benefit" language in favour of the plan members and there is no information about the terms of the White Western Star Division Pension Plan.

Even if s. 15.06 of Plan C-877 is valid, s. 19.03 of Plan C-877 may have barred the employer from amending the plan to create the amending provision in s. 14.01 in the 1981 version of the Plan. S. 14.01 is crucial to the Applicant's right to surplus as it is s.14.01 which is relied upon by the Applicant as empowering it to amend the Plan to provide for surplus reversion.

S. 19.03 of Plan C-877 effectively gives to the employees all beneficial entitlement except surplus attributable to employer contributions not used for satisfaction of liabilities. That is, the "accrued" limit introduced in the amending power in s. 14.01 of the 1981 plan

text evaporates. The strict terms of s.19.03 would bar then the later amendments purporting to give surplus reversion to the employer. The result would be that the Applicant is only entitled to surplus assets attributable to its contributions which are not used to satisfy liabilities.

If s. 19.03 did so operate, according to s.15.06 of Plan C-877 the Applicant could be entitled to no more than the surplus attributable to its contributions that were not used for the satisfaction of plan liabilities. This raises two further questions. First, was the Applicant's withdrawal of surplus in 1985 valid? Second, what happens in light of the actuary's statement that it is impossible to determine the respective contributions of the Applicant and the plan members? Is it not an essential precondition to recovery of any surplus funds that the Applicant prove what its contributions were and what portion of the contributions had been used for satisfaction of the plan liabilities?

We do not fully decide these complicated issues but are content to raise the questions that must be addressed if and when the issues must be decided.

Even assuming, however, that the Applicant is correct and 1981 is the start date of the plan, it is doubtful that surplus entitlement lies fully with the Applicant. The relevant plan provisions in the 1981 text are s. 14.01 and s. 15.06. S. 14.01 gives the employer a unilateral right to amend the plan provided that "no such amendment shall adversely affect any accrued interest or benefit" of Plan members. S. 15.06 says that after satisfaction of all liabilities, "any assets attributable to Employer contributions" shall be distributed to the Employer. By implication and in light of s.19.01 giving exclusive benefit of the Plan to the plan members, the plan beneficiaries are entitled to all other surplus on termination. The Applicant would be limited by the terms of the 1981 Plan text to surplus attributable to its contributions that was not needed for plan liabilities.

The Plan was revised and restated in 1985 resulting in the insertion of s.13.08 which, it will be recalled, provides that any surplus assets on termination are to go to the employer.

The question is whether s.13.08 could be inserted into the Plan in light of s.14.01. The amendment which led to s.13.08 had the apparent effect of taking away the employees' previous rights to all surplus other than that attributable to employer contributions. The amending power in s. 14.01 of the 1981 Plan precludes any amendment which "diminishes or adversely affects any accrued interest or benefit". The meaning of the phrase "any accrued interest or benefit" is unclear. On a variety of constructions, it is possible to conclude that the limitation on the amendment power precluded the insertion of s.13.08. For example, the word "interest", even as modified by the word "accrued" may be broad enough to cover the right to surplus on plan termination.

Another possible construction depends upon whether the word "accrued" modifies both "interest" and "benefit". One could argue both ways. A plain reading of the phrase would leave the word "benefit" unrestricted by the word "accrued". On that reading, removing or reducing the employees right to surplus on wind up amounts to an adverse affect on its benefits and is invalid.

The Applicant argues that the word "accrued" is to modify both "interest" and "benefit" and because the right to surplus would only arise on termination, the employees right was not "accrued". It may be that the narrow meaning is the better interpretation but even then, on the facts before us, the Applicant is in a difficult position. Remember, the Applicant withdrew close to \$3.0 million of surplus in 1985, that being the same time as the purported amendment took place. Thus, the Plan must have been in surplus in 1985 so can the Applicant now be heard to say that surplus had not "accrued"? The act of withdrawing surplus may, in effect, have crystallized the surplus and if the employees were entitled to surplus it may be correct to see them as having as "accrued" right at that time.

On this view, the 1985 amendment is invalid to the extent there was surplus at the time the amendment was made and to the extent it can be said that the interest of the plan members in existing surplus at 1985 was "accrued".

Again, we are in the difficult position of having had only one side of this issue argued as the dissident plan members were unrepresented. As we do not have to decide this issue to come to a determination under subs. 79(3), we decline to do so but alert the Applicant to the problems we see with its position on this particular matter.

Conclusion

As the Applicant has failed to meet the requirements of clause 79(3)(d) and has not clearly met the requirements of clause 79(3)(b) of the Act, its application is denied.

DATED AT TORONTO, ONTARIO this 21st Day of September, 1993.

M. Joseph Regan, Chair, Eileen E. Gillese, Vice Chair, Darcie L. Beggs, M. David R. Brown, Monica J. Townson

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General Enquiries/Forms		314-0660
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Trade, Commercial, Public Administration	Larry Falconer	314-0610	Penny McIlraith	314-0594
Food, Beverages, Textiles Paper...	Jaen Pringi	314-0586	Sandy Malloy	314-0636

Contacts For Plan Related Enquiries**1. Sector Allocations - (At least one plan with 250 or more members) (cont'd)**

Sectors	Pension Officer		Alternate	
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Printing, Primary Metals, Machinery...	Mark Henry	314-0584	Doug Kaye	314-0605
Electrical, Non-Metallic, Chemicals	David Kearney	314-0590	Elizabeth Addo	314-0607

2. ALPHA ALLOCATIONS - Defined Benefit & Multi-Employer Plans - (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A - BRI	David Allan	314-0612	Claude De Souza	314-0608
BRO - COM	Steve Young	314-0646	Doug Kaye	314-0605
CON - EZZ	Alain Malaket	314-0609	Claude De Souza	314-0608
F - HAZ	Larry Murray	314-0644	Merle Corbie	314-0637
HEA - KMZ	William Qualtrough	314-0641	Lynn Barron	314-0639
KNA - MOQ	Elizabeth Carter	314-0604	Wynnell De Landro	314-0603
MOR - PNZ	Stanley Chan	314-0635	John Staric	314-0596
POL - SHE	Maureen Barber	314-0645	Lynn Barron	314-0639

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans - (Plans with less than 250 members) (cont'd)

Alpha Range	Pension Officer		Alternate	
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TORR *	John Graham	314-0647	John Staric	314-0596

* Companies with alpha-numeric names

3. ALPHA ALLOCATIONS - Defined Contributions Plans

Alpha Range	Pension Analyst		Alternate	
A - BAX	Sandy Malloy	314-0636	Jaan Pringi	314-0586
BAY - Canada	Doug Kaye	314-0605	Steve Young	314-0646
Canadian - COK	Margaret Fennell	314-0600	John Graham	314-0647
COL - DIL	Claude De Souza	314-0608	David Allan	314-0612
DIM - FLO	Elizabeth Addo	314-0607	David Kearney	314-0590
FLU - HAL	Margaret Fennell	314-0600	Alain Malaket	314-0609
HAM - JAL	Merle Corbie	314-0637	Larry Murray	314-0644
JAM - LEU	Wynnell De Landro	314-0603	Elizabeth Carter	314-0604
LEV - MIL	Penny McIlraith	314-0594	Larry Falconer	314-0610

3. Alpha Allocations - Defined Contributions Plans (cont'd)

Alpha Range	Pension Analyst		Alternate	
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ONU -RAL	Lynn Barron	314-0639	Maureen Barber	314-0645
RAM -SHA	John Staric	314-0596	Stanley Chan	314-0635
SHE -THA	Merle Corbie	314-0637	Larry Murray	314-0644
THE -VUL	Lynn Barron	314-0639	William Qualtrough	314-0641
VUM *	Mark Eagles	314-0599	Larry Martello	314-0587

4. ALPHA ALLOCATIONS - Pension Plans of Insolvent Companies

Alpha Range	Coordinator	
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F -P	Robin Gray	314-0593
Q *	Lawrence Contant	314-0602

* Companies with alpha-numeric names

**The Pension Commission is Moving on
Monday, May 9, 1994**

The PCO will open its doors for business on the 29th floor of 250 Yonge Street (at Yonge and Albert Street, just south of Dundas Street) in downtown Toronto on May 9.

All correspondence, filings and submissions should be addressed or delivered on and after May 9, 1994 to:

The Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, ON M5B 2N7

All staff phone numbers and fax numbers remain unchanged.

Watch the next issue of the *PCO Bulletin* for more information on the move.

Please forward undeliverable copies to:

The Pension Commission of Ontario
101 Bloor Street West, 9th Floor
Toronto, Ontario
M7A 2K2



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THE PENSION COMMISSION OF ONTARIO

BULLETIN

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Spring 1994

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The material in the *Pension Commission of Ontario Bulletin* (the "*PCO Bulletin*") published by the PCO and/or made available by the PCO on the *Bulletin Board System* (operated by Canada Remote Systems - CRS Online), ("CRS Online") (the "*System*"), has been prepared by the PCO to provide general information about pension matters to the public.

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

The focus of this issue of the PCO Bulletin is on compliance. Several articles describe situations, offer advice and provide information to pension plan administrators, their agents and staff about how problems can be avoided and how applicants can facilitate the timely approval of applications and submissions.

The articles describe:

- *circumstances in which filings are frequently deficient*
- *tips on how best to approach the application process and deal with PCO staff*
- *the most common problems relating to applications to register new plans and plan amendments*
- *how the Pension Plans Branch has been restructured to improve service*

When applicants follow these suggestions, the PCO is able to process filings more quickly and efficiently. PCO staff are striving to achieve an efficient pension regulatory system to serve the best interests of all parties.

PCO Urges Plan Administrators to Demonstrate Compliance for A More Efficient Regulatory System

The Director of the Pension Plans Branch urges pension plan administrators, their agents and staff to ensure that filings and submissions are complete, correct and certified (where applicable) when filed with the PCO. The result will be better service and an expedited approvals process.

In remarks made to the Lexium Conference on *Pension Policy and Regulation in Ontario* held in Toronto last September, Nurez Jiwani, Director - Pension Plans Branch reported that more than half the applications and filings received by the PCO are deficient in some manner. This problem significantly increases the PCO's workload and can cause lengthy delays in the approval of applications and requests requiring consents.

Some pension plan administrators, their agents and staff may be unaware of some of the steps that should be considered or taken before contacting PCO staff about an application, submission or filing. Please see the article in this issue *Dealing With the PCO: Tips for Plan Administrators, Agents and their Staff*.

If administrators and their agents comply fully with the requirements of the Pension Benefits Act (PBA) and Regulation, filings will be processed in a more timely manner. Such co-operation will improve efficiency, reduce administrative costs and benefit all users of the pension regulatory system.

Volume of Business Processed by PCO Staff

In 1992, 48 branch staff handled a total 51,600 applications and filings. The receipt of deficient filings frequently leads to phone calls and correspondence between PCO staff and administrators and their agents. This, in turn, causes unnecessary delays in processing filings and submissions.

In light of the high volume of business, the need to submit complete, accurate and certified documents is clear. This is a major factor affecting the Commission's ability to provide quality service to stakeholders. It also affects, by extension, the PCO's ability to regulate pension plans effectively.

Most Common Filing Problems

PCO staff have identified the most common situations where incomplete or deficient filings consistently cause delays in the acceptance of filings and the approval of applications. These situations are discussed below.

Annual Information Returns (AIRs)

Some pension plan administrators submit Annual Information Returns which do not show employer and employee contributions to the pension fund as required. In addition, many returns do not show the actual amount of employer contributions **paid** into the fund for the filing period.

In other cases, the Annual Information Return filing fees and the Pension Benefits Guarantee Fund (PBGF) assessments are calculated incorrectly, thus delaying processing of the return. The failure of a plan administrator or actuary to certify a PBGF assessment will certainly cause a delay in processing the assessment.

Registration of a Pension Plan or a Pension Plan Amendment

Pension plan administrators registering a plan must comply with the requirements described in the Administrative Practice on page 12 of this issue (also referred to as R500-201 on the BBS).

Typically, plan administrators fail to complete or submit the necessary application and plan documentation. Inevitably, these omissions delay the registration process.

In other instances, plan administrators do not provide or fully complete the Certificate of Compliance that is required when registering a new plan or plan amendment. This certificate contains the administrator's certification that the terms of the plan, or amendments to it, are in compliance with the requirements of pension legislation.

Early Retirement Windows

Pension plan administrators must demonstrate that they have complied fully with the benefit improvements, notice requirements, and funding provisions of the PCO's policy on early retirement windows, or obtain the agreement of the Superintendent to exercise discretion and vary the requirements. Compliance with these aspects of the policy must be met before plan members are offered an early retirement window option.

Refund of Member Contributions

Pension plan administrators should note that, in order to refund required contributions to plan members, they must receive approval from the Commission.

It is necessary to amend a pension plan to provide for a refund of member required contributions unless the plan already contains such a provision. The amendment must make it clear that the employer has assumed responsibility for funding all pension benefits associated with the required contributions being refunded.

Plan administrators must also comply with the PCO's published policy which requires that there is equitable treatment of the individuals within any category or categories (actives, retirees, deferreds) to whom the refund is being made. Failure to comply with this or other requirements will cause delays in approving applications for the refund of member contributions.

Refunds of an Employer Overpayment to a Plan

In applying to the Commission for a refund of an employer overpayment to a pension plan, plan administrators must specify the type of overpayment which was made. In addition, plan administrators should be aware that the legislation requires that an application to the Commission for such a refund must be made in the same fiscal year in which the employer's overpayment occurred.

The PCO advises plan administrators to consult its published policy on the notice requirements relating to an application for a refund of an employer overpayment to a pension plan.

Winding up a Pension Plan

The PCO published Compliance Assistance Guideline #4 (Revised December 1990), (also referred to as W100-100 on the BBS) to assist plan sponsors with the wind up and related issues.

Pension plan administrators are required to issue a Notice of Proposal before proceeding with the wind up of a plan. Plan administrators should note that a wind-up report, along with the related checklist, must be filed with the Commission within 6 months from the effective date of the plan wind up.

For non-contributory pension plans, the effective date of wind up cannot be earlier than the date on which plan members are given notice of the proposal to wind up the pension plan.

In the case of contributory pension plans, the effective date of the wind up cannot be earlier than the date on which members' contributions to the plan cease to be deducted.

The Commission has found that, when pension plans are wound up, there are often serious problems caused by the failure to include or properly value all the benefits to which members are entitled particularly, enhanced early retirement benefits to which members who meet certain age and service conditions are entitled to "grow in" in accordance with the requirements of the legislation.

The failure of some pension plan administrators to proceed with the distribution of members' benefits soon after the wind-up report is approved is a further cause of delay in winding up pension plans.

Application for a Refund of Surplus

Pension plan administrators who apply to the Commission for a refund of surplus must issue a notice of the application to members, former members and certain other persons specified in the legislation. The notice must state how much of the surplus is attributable to employer and employee contributions to the pension plan. The notice must also disclose the plan's provisions that relate to how the surplus amount is to be dealt with on wind up of the plan including historical language and amendments.

In addition, pension plan administrators must outline in their application to the Commission, how the employer has complied with all the legislative requirements needed to receive the Commission's approval for a refund of surplus.

In general, the Commission will require that the members' share of any surplus be distributed, before surplus is paid to an employer.

Full Wind Ups with Surplus Distribution Outstanding

The PCO has noted that there are currently 200 pension plan wind ups in progress where the basic benefits have been paid but the distribution of surplus is outstanding. The failure of a plan administrator to resolve this issue has delayed the wind-up process in some cases for a period of two, three, or five years.

The legislation requires that the distribution of all pension plan assets occur at the time a plan is wound up. The PCO

has recently begun to take measures to ensure that the administrators of the 200 plans for which the distribution of surplus assets is outstanding, proceed with the distribution of these assets.

Insolvent Companies

There are sometimes delays in winding up the pension plan of a company which has become insolvent. The PCO is currently monitoring the progress of the wind ups of about 200 pension plans of insolvent companies. The PCO wants to ensure that these pension plans are wound up on a timely basis and at the minimum possible cost to the plan beneficiaries.

Conclusion

With an awareness of the common causes that delay the processing and approval of applications, a better understanding of how best to approach PCO staff and, by submitting accurate, complete, certified information - you can facilitate timely approval of your applications and acceptance of your filings.

Basic Facts About Ontario Pension Plans: Pension Plan Registration and Wind-up Statistics

There has been considerable interest expressed by the pension community in pension plan data over the past year. Consequently, in the August 1993 issue of the *PCO Bulletin*, we announced plans to publish statistics about Ontario pension plans regularly.

In October, *Pension Plans in Canada (Data for 1/1/92)* was published by Statistics Canada and attracted considerable media attention. As a follow-up to the interest generated by that publication, we featured an article in the winter issue of the *PCO Bulletin* which was prepared by Karen Maser, Chief, Pensions Section at Statistics Canada. In her article, Ms. Maser summarized key data about Ontario pension plans.

In this and future issues of the *PCO Bulletin*, we will provide *Basic Facts About Ontario Pension Plans* and focus on activity relating to pension plan registrations and wind ups. As our ability and means to capture data increases, more pension plan statistics may be available in the future.

Statistics as at December 31, 1992

Chart A represents the number and type of active pension plans registered with the PCO as at December 31, 1992. At that time, 8,043 active pension plans covering 1,931,972 members were registered. (Active pension plans include plans that are in the process of being registered and do not include those plans which are in the process of being wound up in which members are no longer accruing benefits.)

Statistics as at December 31, 1993

Chart B displays the type of new pension plans registered during the year and membership by type of plans.

During 1993, a total of 298 new pension plans covering 17,159 members were registered with the PCO. One hundred and twenty-eight new defined benefit pension plans were registered during the year covering 9,283 members, compared to 168 defined contribution pension plans covering 6,866 members registered during the period.

Chart C indicates that as at December 31, 1993, there were 7,666 active pension plans registered with the PCO, covering 1,891,827 members. There were 377 fewer active pension plans as compared with the total number of active pension plans at December 31, 1992 and a corresponding drop of 40,145 people covered by pension plans in Ontario for the period.

Chart D provides information about full and partial plan wind ups approved by the Superintendent of Pensions during 1993.

A total of 668 full wind ups affecting 18,600 beneficiaries were approved last year. Of these full wind ups, 451 were defined contribution plans affecting 7,528 beneficiaries and 206 were defined benefit pension plans affecting 10,838 beneficiaries. There were 11 "other" plans (e.g., multi-employer or "hybrid" plans) that wound up affecting 234 beneficiaries.

A total of 151 partial plan wind ups were approved during the same period affecting 10,394 beneficiaries. Of these partial wind ups, 47 were defined contribution plans affecting 1,581 beneficiaries and 100 were defined benefit pension plans affecting 8,457 beneficiaries.

Active Plans by Plan Type as of December 31, 1992 (Chart A)

Active Membership size	Defined Benefits		Defined Contributions		Multi Employer Plans		Other		Total	
	Plans	Members	Plans	Members	Plans	Members	Plans	Members	Plans	Members
0	168	0	108	0	1	0	1	0	278	0
1	590	590	123	123	0	0	5	5	718	718
2-249	2,555	164,098	3,608	99,738	35	3,507	33	2,691	6,231	270,034
250-499	292	102,907	51	17,885	22	8,010	7	2,310	372	131,112
500-999	165	116,168	20	14,481	20	14,101	5	3,165	210	147,915
1000-4999	139	275,697	16	25,918	28	66,676	3	7,218	186	375,509
5000-9999	20	132,836	0	0	9	66,368	1	9,691	30	208,895
10000+	16	746,370	0	0	2	51,419	0	0	18	797,789
Total	3,945	1,538,666	3,926	158,145	117	210,081	55	25,080	8,043	1,931,972

New Plans Registered in 1993 (Chart B)

Month	# of New DB Plans	# of Members	# of New DC Plans	# of Members	# of New Other Plans	# of Members	Total # of New Plans	Total # of Members
Totals	128	9,283	168	6,866	2	1,010	298	17,159

Active Plans by Plan Type as of December 31, 1993 (Chart C)

Active Membership	Defined Benefits		Defined Contributions		Multi Employer Plans		Other		Total	
	Plans	Members	Plans	Members	Plans	Members	Plans	Members	Plans	Members
0	141	0	67	0	1	0	2	0	211	0
1	561	561	104	104	0	0	2	2	667	667
2-249	2,387	152,229	3,495	101,730	36	3,474	52	3,933	5,970	261,366
250-499	269	94,775	62	21,292	27	9,808	11	3,701	369	129,576
500-999	167	115,923	20	14,464	16	11,415	9	6,308	212	148,110
1000-4999	143	282,604	17	27,376	29	69,269	7	16,837	196	395,086
5000-9999	15	104,084	0	0	7	52,627	2	17,118	24	173,829
10000+	15	744,318	0	0	2	38,875	0	0	17	783,193
Total	3,698	1,494,494	3,765	164,966	118	184,468	85	47,899	7,666	1,891,827

Pension Plan Wind Ups in 1993 (Chart D)

Month	# of DB Plans	# of Beneficiaries	# of DC Plans	# of Beneficiaries	# of Other Plans	# of Beneficiaries	Total # of Full Wind Ups Approved	Total # of Members
Partial	100	8,457	47	1,581	4	152	151	10,394
Full	206	10,838	451	7,528	11	234	668	18,600

Announcements

Commission Decides on the Role of the Presiding Officer

At the Commission meeting held on January 27, 1994 the Commission discussed the matter of the role of the presiding officer at a pre-hearing conference and considered whether the presiding officer should continue as a member of the hearing panel without requiring the consent of all parties to the hearing.

The Commission adopted the policy that the presiding officer at a pre-hearing conference has the right to continue as a member of the hearing panel.

1990 Consolidated Office Version of Regulation 909 Contains an Error

There is an error in s. 24(3.1) of Regulation 909. The provision reads "Despite subsection (2)..." and should read "Despite subsection (3)..."

Society of Actuaries' Research Project Underway

Concern about the decline in pension plans throughout North America has increased over the past decade among governments and pension industry consultants.

The Society of Actuaries and the Canadian Institute of Actuaries, with support from the Pension Commission of Ontario, are studying the impact of these conditions on the retirement security of employees.

Research on the reasons for and the nature of plan terminations in Ontario from 1988 (when the *Pension Benefits Act, 1987* became effective) to the present, form one part of the study. Data collection began on January 3, 1994.

The jurisdiction of Ontario was selected for several reasons, among them:

- Ontario had the highest number of pension plans and members of any jurisdiction in Canada (peaking in 1988 at approximately 10,500 plans) and
- Ontario's plan termination data is accessible.

The research objectives are:

- to analyze the number of full and partial plan terminations during the period, and the number of participants affected by such terminations

- to analyze the cause of the terminations, and to investigate the factors precipitating terminations, and
- to estimate the broad impact of plan terminations on the participants and to draw conclusions about the retirement security of the population.

Confidentiality in relation to the identity of plans, employers and plan members is being strictly observed and no consulting actuaries have access to the actual termination files. Those with access are sworn to the secrecy of privileged information under review. The final report will contain only statistical information.

The Society of Actuaries - Retirement Systems Research Committee - is the lead organization with respect to guiding the research and the ultimate analysis and formulation of the report. The report, expected in the Fall of 1994, will be published under the auspices of the Society of Actuaries.

Changes to Compliance Assistance Guidelines - Certain CAGs Are No Longer Applicable

In the future, CAGs as readers and pension practitioners have known them, will be discontinued. Instead, they will assume the same presentation as Administrative Practices and will be published in The *PCO Bulletin*. They are also available on the electronic bulletin board system.

Readers should be aware of the change in status of certain CAGs and make note of those that no longer apply:

- CAG #1 published in November 1990 - "A guide to preparing an application for registration of a pension plan" has been replaced by the CAG published as an administrative practice in this issue. (CAG #1 is also referred to as R500-200 on the BBS; all policies on the BBS can be located by key word search.)
- CAG #2 published in May 1990 - "A guide to preparing an annual information return" continues in effect, except for the PBGF assessment. Please refer to the "Special Notices" in the August 1993 issue of the *PCO Bulletin* which deals with these aspects of AIR filings:
 - PBGF Assessment - Schedule B (with instructions for completing Schedule B)
 - the requirement to collect retail sales tax on PBGF assessments, and
 - other related issues
- CAG #3 published in May 1990 - "A guide to preparing, reviewing and amending a Statement of Investment Policies and Goals" continues in effect (the Investment Policy Return is updated and published in this issue of the PCO Bulletin). (CAG #3 is also referred to as S700-100 on the BBS.)

- CAG #4 published in September 1990 - "A guide to the wind up of a pension plan" continues in effect. (CAG #4 is also referred to as W100-100 on the BBS.)
- CAG #5 published in October 1993 - "A guide to completing the pension plan document checklist effective November 1, 1992" is not applicable on and after May 1, 1994 since the submission of a Pension Plan Document Checklist is no longer required. (CAG #5 is also referred to as R500-250 on the BBS.)
- A new CAG - "A guide to preparing an application for registration of a pension plan" is published as an administrative practice in this issue at page 12. It replaces CAG #1 and is now effective. The CAG includes the application Form 1 (prescribed, English version) and the Fees Schedule to the application. (This is referred to as R500-201 on the BBS.)
- A new CAG - "A guide to preparing an application for the registration of a pension plan amendment" is published as an administrative practice in this issue at page 23. It is now effective and includes prescribed Form 1.1. (This is referred to as R500-251 on the BBS.)

Update on the *PCO Bulletin* in 1993 and 1994

In Volume 4, only two issues were published. These were the August, 1993 and Dec '93 - Jan '94 issues. Those issues were unusually lengthy and this, in part, accounts for there being only two issues in that Volume. Future issues of the *PCO Bulletin* will be referenced seasonally. We also plan to resume publishing on a quarterly basis in 1994.

PCO to Adopt Revenue Canada Numbering System

As a convenience to plan administrators, the PCO intends to adopt Revenue Canada's plan registration numbers in 1994 and will phase out the use of separate provincial plan numbers.

More information on this and other measures designed to harmonize pension plan administration among jurisdictions will be available in coming months.

PCO Office Relocation Effective on May 9, 1994

On Monday, May 9, the PCO will open its doors for business on the 29th floor of 250 Yonge Street (Albert Street and Yonge Street) which is just south of Dundas Street in downtown Toronto.

All correspondence, filings and submissions should be addressed or delivered on and after May 9, 1994 to:

The Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, ON M5B 2N7

All staff phone and fax numbers remain unchanged.



SECTION:	Assets
INDEX NO.:	A700-225
TITLE:	Superintendent Consent Required for Asset Transfer under subsection 81(8)
APPROVED BY:	Superintendent of Pensions
PUBLISHED:	Bulletin 5/1 (Spring, '94) page 10
PUBLISHED:	
EFFECTIVE DATE:	
REVISED DATE:	

Subsection 81(8) is applicable where a portion of the assets of one pension plan will be transferred to another plan and no sale, assignment or disposition has occurred.

Subsection 81(8) of the Pension Benefits Act (the "PBA") states:

No transfer of assets shall be made from one pension plan to another pension fund in circumstances where sections (1) to (7) do not apply or where section 42 or 80 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the purpose, subsections (5) to (7) apply with necessary modifications.

Subsections 81(1) to (7)

The PCO Merger Policy (also referred to as M200-151 on the BBS) dated September, 1993, identifies conditions to be met in order to obtain the Superintendent's consent to a transfer of assets where subsections 81(1) to (7) apply. These subsections apply where all of the assets of one pension plan will be transferred to another plan and no sale, assignment or disposition has occurred.

Subsections 42 and 80

Section 42 identifies the transfer options which must be provided, in specific circumstances, to an individual plan member who has terminated employment or plan membership and is entitled to a deferred pension at the date of termination. Under these circumstances, the Superintendent's consent to the transfer of the commuted value of the deferred benefit is normally not required unless subsection 19(4) or 19(10) of the regulations apply.

In accordance with section 80, no transfer of assets from one pension fund to another pension fund as a result of the sale, assignment or disposition of all or part of an employer's business, or all or part of the assets of an employer's business may occur without the prior consent of the Superintendent. PCO Policy Statement 2 (called "Asset Transfer Resulting from Sale of Business" and referred to as A700-200 on the BBS), dated July 18, 1988, identifies acceptable methods of allocating assets between the benefit liabilities of the plan members who are affected by the sale, assignment or disposition and the benefit liabilities that will be retained in the ongoing portion of the plan.

Obtaining Consent For Subsection 81(8) Transfers

Subsection 81(5) applies to asset transfers made under subsection 81(8). In accordance with subsection 81(5), the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members affected by the transfer.

In circumstances where an application for the Superintendent's consent to a transfer of assets must be made under subsection 81(8), the Merger Policy (M200-151) and Policy Statement 2 (A700-200) identify conditions under which the Superintendent would consider the members' and former members' benefits to be adequately protected as required by the PBA. These conditions apply with necessary modifications to applications for asset transfers under subsection 81(8) from pension plans registered in Ontario.

Reciprocal Transfer Agreements

Please note that by definition a "reciprocal transfer agreement" provides for the transfer of money or credits for employment or both in respect of individual members. Except as permitted under subsection 80(10), the Superintendent's prior consent to an asset transfer with respect to a group of individuals must be obtained in accordance with subsections 80(5) or 81(5) as applicable.



SECTION: Registration

INDEX NO.: R500-201

TITLE: Preparation of an Application for Registration

APPROVED BY:

PUBLISHED: Bulletin 5/1 (Spring '94), page 12

PUBLISHED:

EFFECTIVE DATE:

REVISED DATE:

A Guide to Preparing an Application for Registration of a Pension Plan

This administrative practice replaces CAG #1 which was published in February 1990.

*On and after May 1, 1994, the Pension Plan Document Checklist is **no longer required** when making application for the registration of a pension plan or a plan amendment. The Pension Plan Document Checklist was introduced in Compliance Assistance Guideline #5 and was effective on November 1, 1992.*

This guideline is designed to assist the Administrator of a pension plan in completing and filing an application for registration of a pension plan (Form 1) with the required supporting documents. It applies to all applications submitted on or after May 1, 1994 which is the effective date for revised Form 1.

A completed application for registration includes several components:

- completed Application for Registration (prescribed Form 1) and fees schedule;
- required supporting documents; and
- registration fees (cheque is made payable to the Minister of Finance).

Requirement to Identify the Administrator

An Administrator must be identified in order for the pension plan to be eligible for registration. The Administrator is legally responsible for ensuring that the pension plan and pension fund are administered in accordance with the *Pension Benefits Act*, R.S.O. 1990, (the "Act"), and Regulation 909. The following bodies generally may serve as the Administrator:

- an employer or employers;
- pension committee composed of representatives of members of a pension plan;
- a pension committee composed of representatives of the plan sponsor and members;
- an insurance company (only if the insurance company has assumed full liability for the pension benefits);
- a board of trustees (in the case of multi-employer pension plans [MEPPs]); and
- an agency, board or commission made responsible by legislation for the administration of a pension plan.

Effective Date of the Pension Plan

The date on which the pension plan becomes effective is required on the application. This may differ from the date of establishment which refers to the date on which a Resolution of the Board of Directors, or minutes, or other documentation evidences the establishment of a pension plan. The date of establishment is not required on the application. However, the legislation requires the Administrator to apply to the Superintendent of Pensions for registration within 60 days after the day the pension plan is established.

Funding Issues

There are generally two funding approaches: pension benefits fully guaranteed by an insurance company, or a pension fund.

The first approach to funding can be adopted only in the case of a “guaranteed annuity” plan, where pension benefits are completely insured or guaranteed by an insurance company which has assumed full liability for the pension benefits.

The name and address of the insurance company must be provided on the application.

If the second approach to funding is adopted, a pension fund is established to support the pension plan. All necessary arrangements for funding must be in place at the time the application for registration is made. These arrangements will identify:

- the name of the fund;
- the name and address of the custodian (e.g. trust or insurance company); and
- the names and addresses of all agents of the plan administrator including actuaries and investment counsel.

Plan Membership

The application must document all active members of the plan as of the effective date of the pension plan. The total number of male and female members in their respective provincial jurisdictions of employment must be recorded.

Registration Fees Schedule

The Fees Schedule for registration of a pension plan requests membership details in the pension plan as of the effective date. There is a section with instructions for calculating the fees payable in accordance with the formula prescribed by section 2 of Regulation 909.

Jurisdiction Where the Plurality of Members Are Employed Regulates the Pension Plan

The province with a plurality of members of a pension plan employed in that province (in accordance with reciprocal agreements between designated provinces or territories), assumes the role of regulator of the pension plan. The regulator administers legislation and receives fees for all membership in the designated provinces or territories.

Registration fees payable, therefore, are based on the total number of plan members employed in the designated provinces or territories as recorded in the application.

Required Supporting Documents

Unless the application includes all of the following documents (applicable to the type of pension plan), the application cannot be processed by the PCO.

Supporting documents must be certified as true copies by an authorized officer of the employer or plan sponsor or other appropriate person authorized by the employer or plan sponsor (certification also applies to “replacement pages” for plan texts).

The Administrator is responsible for ensuring that certified copies of the following documents (where applicable in the circumstance), are attached to the application:

- plan text and any amendments;
- collective agreement if plan was set up in accordance with a collective agreement;
- trust agreement(s);
- deposit contract(s) with an insurance company;
- group annuity contract(s);
- explanatory statement to members and persons eligible to become members;
- Investment Policy Return and where applicable, a Statement of Investment Policies and Goals;
- cost certificate and actuarial report (if a defined benefit plan);

The following additional information must be supplied with the application, where appropriate:

- names and addresses of each member of the pension committee, board, agency or commission that is the Administrator;
- names and addresses of each employer or plan sponsor participating in the pension plan;
- names and certificate of registration number(s) for all other existing pension plans of the employer(s) or plan sponsor(s); and
- names of any previous plan(s), certificate of registration number(s) and their current status.

Registration fees, calculated according to the Fees Schedule found in the application (Form 1), must be filed together with the application. The cheque is payable to the Minister of Finance and must accompany the application.

Declaration

The declaration must be signed by the administrator or the authorized signing officer and the signature must be witnessed.

The signed declaration is evidence that the Administrator fully understands the obligation to ensure that the filed documents comply with the *Pension Benefits Act* and Regulations of Ontario and the legislation of any other designated jurisdiction that applies to the plan.

The signed declaration further evidences and confirms that this obligation has been met.

Pension Commission of Ontario Procedures

The application for registration will not be processed unless all components including

- applicable and required supporting documents and
- fees schedule and fees are included.

The Superintendent of Pensions will acknowledge the application in writing within 30 days upon receipt of a fully executed application for registration with the required supporting documents and fees.

Certificate of Registration

When the processing of the application is complete, the Superintendent will issue a certificate of registration based on the administrator's declaration of compliance with all applicable legislation. If the application for registration is deficient, the certificate for registration will be issued only when the Superintendent is satisfied that all necessary documentation has been filed.

How to Obtain Copies of Form 1

- 1) For convenience, readers of the *PCO Bulletin* may reproduce the application for registration (Form 1) found in this administrative practice. The French version of Form 1 will be published in the next issue of the *PCO Bulletin*.
- 2) Until May 6, 1994 copies of the application for registration (Form 1) can be obtained from The Pension Commission of Ontario, Revenue Section, 101 Bloor Street West, Toronto, Ontario M7A 2K2. On and after Monday, May 9, 1994 copies of the application for registration (Form 1) can be obtained from The Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, Ontario M5B 2N7.
- 3) Subscribers to the PCO Conference on the BBS are also able to access a file containing Form 1 electronically. The form is in WordPerfect 5.1 ® format.
- 4) The PCO staff person responsible for Form 1 is George Ha at (416) 314-0676.

Delivery Instructions

To file the completed, certified application for registration, including required supporting documentation and fees, please deliver to the address noted above.

Enquiries

All enquiries concerning the application for registration should be directed to the appropriate Pension Officer or Pension Analyst.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 1 - Pension Benefits Act, 1990

Regulation 909

(Return Original with Fees - Keep Working Copy)

APPLICATION FOR REGISTRATION OF A PENSION PLAN

(Please type or print)

INFORMATION CONCERNING THE ADMINISTRATOR

1. The name of the administrator is:

(Note: If the administrator is a corporation, pension committee or board, use the name of the corporation, committee or board)

2. The mailing address and postal code of the administrator is:

3. The telephone number of the administrator is: ()

4. Indicate whether the plan administrator is: (Check one)

☐ an employer or employers
shown in paragraph 7

☐ a board of trustees

☐ a pension committee

☐ a board, agency or commission made responsible by
an act of the legislature for the administration of the
pension plan

☐ an insurance company

5. If the administrator is a pension committee, board, agency or commission, attach to this Form the name, mailing address and postal code of each member.

6. If the administrator is a pension committee, indicate the number of members who are representatives of:

(a) the employer or employers or any other person required to make contributions under the pension
plan on behalf of an employer

(b) members of the pension plan

(c) TOTAL

FOR PCO USE ONLY	
C	/00/
RA	/00/
<input type="checkbox"/> Form signed	
<input type="checkbox"/> No plan documents received	
<input type="checkbox"/> Additional fee needed:	
	\$
<input type="checkbox"/> Refund issued:	
	\$
Verified by: _____	

INFORMATION CONCERNING THE EMPLOYER

7. The name of the employer is: _____

8. The mailing address and postal code of the employer is: _____

18. Are there any other pension plans already set up by the employer(s) as identified in paragraph 7 or by an affiliated or subsidiary company?

_____ Yes _____ No

If "Yes", attach a list to the end of this Form, consisting of:

- (a) the name(s) of the plan(s);
- (b) the name(s) of the employer(s) for each plan, if different from that identified in paragraph 7;
- (c) the certificate of registration number(s) for each plan;
- (d) the name of the government with which each plan is registered; and
- (e) the number of Ontario members in each plan.

19. Have the members covered by this new plan participated in the past in any other pension plan of your company, including a predecessor, subsidiary or affiliated company?

_____ Yes _____ No

If "Yes", state the name of the previous plan(s), the provincial registration number(s) and explain the current status of the plan(s):

FUNDING INFORMATION

20. Are the benefits provided for in the plan totally insured or guaranteed by an insurance company?

_____ Yes _____ No

If "Yes", state the name, mailing address and postal code of the insurance company:

If "No", a fund must be set up. State the name of the fund and the name, mailing address and postal code of the custodian of the fund's assets:

Fund Name: _____

Custodian Name: _____

Mailing Address: _____

21. State the name, mailing address and postal code of the investment counsel, if any:
-
22. State the name, mailing address and postal code of the actuarial consulting firm, if any:
-

PLAN MEMBERSHIP AND REGISTRATION FEES

23. Enter below the number of members, excluding former members, and the location of their employment as of the effective date of the plan:

<u>Location of Employment:</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
Ontario			
Newfoundland			
Prince Edward Island			
Nova Scotia			
New Brunswick			
Quebec			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Yukon Territory			
Northwest Territories			
Outside Canada			
TOTALS			*

(*Note: This total must equal the total number of members as of the effective date of the plan.)

24. Complete the **Schedule** provided by the Superintendent to calculate the required registration fee and enter the amount payable:
- \$ _____

DOCUMENTS TO BE ATTACHED

25. This application for registration form must be accompanied by:
- (a) certified copies of the documents that create and support the pension plan;
 - (b) certified copies of the documents that create and support the pension fund;
 - (c) a certified copy of any reciprocal transfer agreement related to the pension plan;
 - (d) a certified copy of the explanations and other information provided to members and persons eligible to become members as required under subsection 25(1) of the Act (Information provided by administrator).
26. Indicate below whether the applicable documents and information are attached or are not applicable (N/A):
- _____ Certified copy of the text of the plan and of the amendments, if any.
 - _____ Certified copy of the collective agreement if the plan was set up in accordance with a labour agreement.
 - _____ Certified copy of the trust agreement(s).
 - _____ Certified copy of the deposit contract(s) with an insurance company.
 - _____ Certified copy of the group annuity contract(s).
 - _____ Certified copy of the explanatory statement to members and persons eligible to become members (subsection 25(1) of the Act).
 - _____ Certified copy of the statement of investment policies and goals.
 - _____ A list of the names and addresses of each member of the pension committee, board, agency or commission as per paragraph 5.
 - _____ A list of the other pension plans already set up by the employer as per paragraph 18.
 - _____ A list of the names and addresses of each employer participating in this plan as per paragraph 10.
 - _____ A list of names and certificate of registration numbers for all previous pension plans of the employer(s) as per paragraph 19.
 - _____ Other (*specify*): _____
 - _____ Application Fee enclosed. Computed in accordance with the Schedule provided by the Superintendent, payable to the **Minister of Finance**.

DECLARATION BY ADMINISTRATOR

I, _____, hereby apply for registration of the pension plan identified in this Form under the Act and the Regulations. I make the application in my capacity as the administrator/duly authorized signing officer of the administrator (*strike out inapplicable term*) of

_____ (the "Pension Plan").
(Name of the pension plan)

Attached are certified copies of the documents that create and support the Pension Plan and the pension fund as well as any other documents required to be filed under the Act.

I DECLARE THAT:

1. The documents filed with this Form include certified copies of the documents that create and support the Pension Plan and the pension fund and those documents, as well as all other documents filed with this application, comply with the Act and the Regulations;
2. I understand that the obligation to ensure that the documents filed with this Form comply with the Act and the Regulations is the responsibility of the administrator, and I declare that I have fulfilled that obligation and have complied with the provisions of the Act and the Regulations in making this application for registration; and
3. I acknowledge that this declaration extends to compliance with the pension legislation of any designated jurisdiction within Canada, other than Ontario, where the legislation of a designated jurisdiction applies to members and former members of the pension plan.

I declare that I am aware of my obligations under the Act as administrator of the Pension Plan and that the above statements are true to the best of my knowledge and belief.

DATED at the City of _____, this _____ day of _____, 199____.

Witness

Signature of administrator or authorized signing officer.

Name of Witness

Name of administrator or authorized signing officer (*printed*)

Address of Witness

Completing the Application for Registration of a Plan Amendment (Form 1.1)

If the application involves:

- a transfer of assets;
- wind up (full or partial);
- distribution of surplus;
- merger of pension plans;
- plan conversion;
- a refund of contributions; or
- an early retirement or downsizing program

the type of plan amendment must be clearly indicated because the regulatory review process is specialized depending on the activity. If none of these transactions are invoiced, the "other" item must be checked.

Please note: many of the applications which involve special processing will require the filing of certain documentation in addition to the amending document and Form 1.1.

Declaration

The declaration must be signed by the plan administrator or an authorized signing officer and the signature must be witnessed. The signed declaration is evidence that the plan administrator understands fully the obligation to ensure that the filed documents comply with the *Pension Benefits Act* and Regulations of Ontario and the legislation of any other designated jurisdiction that applies to the plan.

The signed declaration confirms that this obligation has been met.

Required Supporting Documents

The amending documents submitted with the application must be certified as true copies by an authorized officer of the employer or plan sponsor or other appropriate person authorized by the employer or plan sponsor. Unsigned amendments or uncertified "replacement pages" are not acceptable for processing.

Pension Commission of Ontario Procedures

The application for registration will not be processed unless all components including applicable and required supporting documents are included.

Certificate of Registration

When the processing of the application is complete, the Superintendent will issue a certificate of registration based on the administrator's declaration of compliance with all applicable legislation. If the application for registration is deficient, the certificate for registration will be issued only when the Superintendent is satisfied that all necessary documentation has been filed.

How to Obtain Copies of Form 1.1

- 1) For convenience, readers of the *PCO Bulletin* may reproduce the application for registration of a plan amendment (Form 1.1) found in this administrative practice. The French version of Form 1.1 will be published in the next issue of the *PCO Bulletin*.
- 2) Until May 6, 1994 copies of the application for registration of a plan amendment can be obtained from The Pension Commission of Ontario, Revenue Section, 101 Bloor Street West, Toronto, Ontario M7A 2K2

On and after Monday, May 9, 1994 copies of the application for registration of a plan amendment (Form 1.1) can be obtained from The Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, Ontario M5B 2N7.

- 3) Subscribers to the PCO Conference on the BBS can access a file containing Form 1.1 electronically. The form is in WordPerfect 5.1® format.
- 4) The PCO staff person responsible for Form 1.1 is George Ha at (416) 314-0676.

Delivery Instructions

To file the completed, certified application for registration of a plan amendment, including required supporting documentation, please deliver to the address noted above.

Enquiries

All enquiries concerning the application for registration of a plan amendment should be directed to the appropriate Pension Officer or Pension Analyst.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 1.1 - Pension Benefits Act, 1990
Regulation 909

APPLICATION FOR REGISTRATION OF A PENSION PLAN AMENDMENT

(Please type or print)

Pension Commission of Ontario ("PCO") registration number:

Name of pension plan:

Name of employer or sponsor:

Effective date of amendment:

(Day, Month, Year)

Amendment number *(where applicable)*

Please indicate whether the application involves:

☐ Transfer of assets

☐ Distribution of surplus

☐ Early retirement/
downsizing program

☐ Merger of plans

☐ Plan conversion

☐ Other

☐ Refund of contributions

☐ Full or partial wind up
of the pension plan

DECLARATION BY ADMINISTRATOR

I, _____, hereby apply for registration of the pension plan amendment identified in this Form under the Act and the Regulations. I make the application in my capacity as the administrator/duly authorized signing officer of the administrator (*strike out inapplicable term*) of

_____ (the "Pension Plan")
(State the name of the pension plan)

bearing the PCO registration number _____.

Attached is a certified copy of the amending document as well as any other document required to be filed under the Act.

I DECLARE THAT:

- 1. The documents filed with this Form include a certified copy of the amending document and that documents, as well as all other documents filed with this application, comply with the provisions of the Act and the Regulations;
- 2. I understand that the obligation to ensure that the documents filed with this Form comply with the Act and the Regulations is the responsibility of the administrator, and I declare that I have fulfilled that obligation and have complied with the provisions of the Act and the Regulations in making this application for registration; and,
- 3. I acknowledge that this declaration extends to compliance with the pension legislation of any designated jurisdiction within Canada, other than Ontario, where the legislation of a designated jurisdiction applies to members and former members of the pension plan.

I declare that I am aware of my obligations under the Act as administrator of the Pension Plan and that the above statements are true to the best of my knowledge and belief.

DATED at the City of _____, this _____ day of _____, 199__.

Witness

Signature of administrator or authorized signing officer.

Name of Witness

Name of administrator or authorized signing officer (*printed*)

Address of Witness



SECTION:	Surplus
INDEX NO.:	S900-900
TITLE:	Allocation of Surplus Distributed to Members and Former Members on Wind Up
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 5/1 (Spring '94) page 28
PUBLISHED:	
EFFECTIVE DATE:	February 24, 1994
REVISED DATE:	

The following procedures apply where all or part of the surplus is to be allocated among the members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up, on the wind up of a pension plan in whole or in part.

Payment of surplus to such persons may be sought on an application pursuant to subsection 8(1)(a) of Regulation 909, as the result of a surplus sharing agreement pursuant to subsection 8(1)(b) of Regulation 909, or under subsection 8(2) of Regulation 909. Any allocation must be in the context of a wind up report otherwise approved by the Superintendent after considering all legislative requirements, including subsection 70(5) of the Pension Benefits Act (the PBA).

Superintendent's Discretion

1. Pursuant to subsection 70(5) of the PBA, the Superintendent may refuse to approve a wind up report that does not meet the requirements of the PBA and the regulations or that does not protect the interests of the members and former members of the plan.

Allocation of Surplus

2. Regulation 909 subsection 8(1)(a) provides for the payment of surplus out of a pension plan that is being wound up in whole or in part to or for the benefit of members, former members and other persons entitled to payments out of the plan on the date of wind up. Accordingly, all three groups named in that clause should share in the allocation of surplus when proceeding under that clause.
3. The Superintendent may refuse to approve any allocation of surplus contained in a wind up report, whether by cash or by benefit enhancements, that does not protect the interests of members and former members of the plan pursuant to subsection 70(5) of the PBA, and subject to the provisions of the plan.

4. The following examples of surplus allocation would, under the circumstances of most plans, be acceptable as protecting those interests:
 - a) indexing benefits to inflation;
 - b) in defined benefit plans, sharing in proportion to liabilities;
 - c) in a contributory plan, an application to the Commission under subsection 63(7) of the PBA for refund of member and deferred member contributions with an appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for the refund of member contributions;
 - d) in defined contribution plans, sharing in proportion to accumulated contributions plus interest;
 - e) distributing surplus in proportion to length of credited service under the plan;
 - f) retroactive application of the 50 per cent funding rule, with the appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for retroactive 50 per cent funding.
5. The benefit enhancements listed above may be notional enhancements for the purposes of allocating the surplus where the distribution will be made in the form of cash. Alternatively, the benefit enhancements may be provided as actual pension benefits in which event they will be treated as pension benefits for all purposes of the Act, including locking in. The same method of allocation need not be applied to each of the three groups of members, former members, and other beneficiaries under the plan on wind up. If the plan provisions do not stipulate the form in which the surplus is to be provided, the plan text must be amended.
6. Where it is in the best interests of the members and former members, benefit enhancements provided shortly before a wind up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal.
7. Other methods of allocating surplus will be considered. If another method is proposed, the applicant will be asked to describe why the recommendation is thought to protect the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA.

Methods of Distribution

8. The following examples of methods of distributing the surplus allocated among members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up would, under the circumstances of most plans, be acceptable as protecting the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA:
 - a) benefit enhancements;
 - b) cash distribution; or
 - c) a combination of a) and b).
9. Anyone who is entitled to a deferred pension benefit either generally or as a result of a surplus distribution is entitled to the section 42 portability options and the subsection 73(2) transfer rights on wind up.

Documentation

10. The Administrator is required by section 70 to file a wind up report that sets out the benefits to be provided, and the methods of allocating and distributing the assets of the plan. A proposal for the allocation and distribution of plan surplus must be consistent with the provisions of the pension plan and, thus, plan amendments must be filed as appropriate to maintain this consistency.

-
11. No payment may be made out of a pension plan once a notice of proposal to wind up the plan has been given, except with the Superintendent's approval in accordance with section 70 of the PBA. Any assets of the plan, including surplus, may be disbursed only after the Superintendent's approval has been obtained in accordance with section 70, and in accordance with the approved wind up report.

Sharing Surplus with Plan Beneficiaries and Employer

12. These principles and procedures apply where surplus is shared among members, former members and other persons entitled to payments out of the plan on the date of wind up, or where an employer proposes to share surplus among the employer and members, former members and other persons entitled to payments out of the plan on the date of wind up. For payment of all or part of the surplus to an employer, the employer must make application to the Pension Commission of Ontario under Regulation 909 subsections 8(1)(b) or 8(2).

Common Problems To Avoid When Making An Application for Registration of a Pension Plan and a Plan Amendment

This article summarizes the most common mistakes and deficiencies encountered by PCO staff. If incomplete applications or improperly completed application forms are filed, processing delays will result.

You can eliminate unnecessary delays by planning ahead and avoiding these common errors made by plan administrators, their agents and staff in submissions to the PCO.

A Applications to Register New Plans

- Common Problem: No Investment Policy Return (IPR) is Filed

All applications to register new plans must include the Investment Policy Return (IPR), including applications to register new defined contribution plans.

Plans in which benefits are funded by a fully insured contract or a deposit administration contract, must complete only Parts A and B of the IPR.

Plans that are not funded by a fully insured contract or a deposit administration contract must complete Parts A and C of the IPR **and** submit a Statement of Investment Policies and Goals **together with** the application.

For your convenience, an updated version of the Investment Policy Return is found in this issue at page 37.

- Common Problem: No Statement of Investment Policies and Goals is Filed

This document forms part of the application and must be included with it. The requirement applies to all plans except those that are funded by a fully insured contract or deposit administration contract.

- Common Problem: Missing Employee Booklet

The booklet is an explanation of the plan provisions and the rights and obligations of members and persons eligible to become members of the plan. It must be provided to all those persons and filed together with the application.

In some smaller plans, the plan text itself frequently is used as the explanatory booklet and a separate employee booklet is not prepared. If this is the case, **please make this clear in the application.**

- Common Problem: Missing Cost Certificate and/or Actuarial Report

The Regulation requires that an initial cost certificate must be filed within 60 days of the establishment of the plan. If the plan provides defined benefits, a full actuarial report (which includes the cost certificate) is required to be filed with the application and within the 60 day time period.

- Common Problem: Uncertified Plan Documents

The plan text and any amendments submitted with an application must evidence adoption by the employer or plan sponsor. If they do not, certified copies will be requested.

B Applications to Register Plan Amendments

- Common Problem: Failure to Identify the Nature of the Amendment

If the plan amendment involves:

- an asset transfer;
- wind up (full or partial);
- distribution of surplus;
- merger of pension plans;
- plan conversion;
- a refund of contributions; or
- an early retirement program

this must be indicated by checking the appropriate section of the form.

If none of these transactions apply, the “other” box must be checked.

- Common Problem: Uncertified Amending Documents

Unsigned amendments or “replacement pages” for plan texts are frequently submitted. This practice is not acceptable. Only signed amendments are accepted and the employer or plan sponsor’s adoption of the contents of the replacement pages must be evidenced.

Dealing with the PCO: Tips for Plan Administrators, Agents and Staff

This article informs plan administrators, agents and their staff about how to approach the PCO and how to obtain better service and more timely approvals.

The Importance of Demonstrating Compliance

It is the responsibility of individuals in the pension industry, when dealing with the PCO, to **demonstrate** that applications, filings and submissions are in compliance with the Pension Benefits Act (PBA), the Regulations and PCO policies.

Applicants should ensure they have received appropriate professional, actuarial, or legal advice **before** making submissions or filings to the Commission. This will certainly reduce delays when members of the pension industry submit their applications or filings.

PCO staff will advise applicants about the practices and policies of the PCO. However, PCO staff cannot act as independent consultants. Interested parties should obtain independent, professional advice regarding their obligations under the PBA and Regulation.

The Relationship Between PCO Staff, the Superintendent of Pensions and the Commission

PCO staff, in the course of carrying out their duties, provide advice to both applicants to the PCO and to the Superintendent. Staff will review the facts of a submission or an application, and make recommendations based on these facts to the Superintendent or to the Commission (tribunal).

Advice provided by PCO staff is not binding upon the Superintendent. Neither is advice provided by the Superintendent or PCO staff binding upon the Commission (tribunal).

In each case, after considering the facts of an issue, the Superintendent or the Commission (tribunal) will render a decision. While such decisions are made independently, the Superintendent and the Commission (tribunal), as a matter of course, will review the material provided to them by the applicant and other interested parties. Consequently, it is in the interest of applicants to discuss their proposed application with the appropriate Pension Officer or Analyst prior to filing the application .

Important Considerations When Making Applications or Submissions

1) Timing

The PCO and, on occasion, the Commission (tribunal) have been in situations where applicants request a response to last-minute proposals, generally for a compelling business reason. In one case, an employer suddenly realized, a day or two before the planned announcement of an early retirement program for plan members, that it had failed to obtain agreement of the Superintendent in advance of offering the package. This resulted in considerable inconvenience to everyone concerned.

Applicants should be mindful that consultation with staff is especially important where the terms of a proposal, for instance, the terms of a proposed early retirement program, fall outside the parameters of the PCO's published guideline.

In cases such as the example cited above, it is impossible for the applicant to receive an immediate response to the application.

2) Content and the Need to Demonstrate Compliance

Plan administrators and their agents should be aware of the PCO's published guidelines and administrative practices. When making a submission to the Commission, it is necessary to follow the guideline or practice appropriate to the particular submission. Moreover, applicants should demonstrate that they are in compliance with the PCO guideline or the practice that is relevant to their submission.

3) Submissions that Deviate from Policy Guidelines

Sometimes applicants may propose a course of action that deviates from PCO policies and guidelines. For all such proposals, applicants must provide to PCO staff:

- a summary of the background and reasons leading to the proposed course of action;
- a description of the business purpose of the proposed course of action;
- an analysis of the legal and policy issues that form part of the proposed course of action;
- a summary of the applicants's opinion in the matter, including reasons why the proposed course of action should be allowed;

- references to the relevant sections of the PBA, Regulations and PCO policies which support the proposed course of action; and
- all arguments in support of any exemptions sought from the Superintendent or the Commission.

To further support the applicant's position, it may be necessary for the applicant to provide a numerical analysis of results expected from the proposed course of action. We strongly recommend, in these cases, that applicants consult with PCO staff well in advance of the event to determine the type of information they must provide.

4) Exercise of Discretion by the Superintendent or the Commission (Tribunal)

Under the PBA, it is open to the Superintendent of Pensions or the Commission to exercise discretion in certain matters.

In many such cases involving the exercise of discretion, policies have been published which attempt to indicate, in a conceptual manner, how this discretion will be exercised. It is important to note, however, that these policies may not fetter the discretion of the Superintendent or the Commission and every case will be considered on its merits.

Nevertheless, these policies provide guidance as to the issues that will be considered in exercising discretion and consequently, may assist in the preparation of an application.

5) Meetings with PCO Staff to Discuss a Proposed Application

In general, the purpose of a meeting with staff to discuss a proposed application, is to clarify or obtain direction with respect to PCO guidelines, practices and rulings. In most cases, such meetings are held after an applicant has made a submission to the Commission. However, applicants are urged to consider convening a meeting prior to making the application or filing the submission so that the applicant will be aware of all the relevant considerations before preparing an application.

Applicants are advised that upon receipt of the completed application, staff require approximately three months to process the application and prepare the case for presentation to the Commission. (Please refer to the article in the last issue of the *PCO Bulletin* concerning deadlines for the submission of applications to the Commission.)

The Pension Plans Branch: Restructured to Improve Service

While the focus of this issue is on measures that plan administrators, agents and their staff can take to ensure accurate, certified and complete filings and submissions, readers should be aware that efforts have been expended to improve service to stakeholders.

For instance, the branch underwent a major restructuring in May 1992 to deal with the substantial backlog of filings that had developed in the early years following pension reform. Re-engineering of review processes and practices continues.

The key feature of the restructuring was the recognition that Pension Officers and Pension Analysts should assume responsibility for managing caseloads of plans from "birth to death". (Pension Officers are responsible for managing a caseload of defined benefit plans and Pension Analysts are responsible for defined contribution plans.)

Officers and Analysts are aided and supported in managing all aspects of individual plans plus caseloads of up to 250 plans per Officer and 500 per Analyst by the creation of three technical consultant positions. The consultants' expertise relates to:

- filing, financial reporting and funding requirements
- registrations and special situations in ongoing plans namely, asset transfers, conversions and early retirement windows, and
- special situations in wind ups namely, wind up and surplus issues, PBGF and insolvencies.

Typically Officers and Analysts seek advice from the consultants and monthly professional development seminars are held to review common solutions to the problems and issues of the day. Accordingly Officers and Analysts can administer the legislation with greater certainty and consistency.

Furthermore, the opportunity presented by such a structure is that plan administrators, their agents and staff, as well as plan members and others such as collective bargaining agents can build a working relationship with the individual Officer or Analyst assigned to the plan. The result is a more systematic, thorough and therefore, efficient regulatory process.

Forms

Spousal Waivers of Joint and Survivor Pension (Form 3) and Pre-retirement Death Benefit (Form 4)

These prescribed forms were first published in English and French in the September, 1990 issue of the PCO Bulletin. The updated Forms are reproduced in English on pages 35 and 36 in this issue. The French versions of Form 3 and Form 4 will be published in the next issue of the PCO Bulletin. Readers are invited to make copies of these published Forms and complete them for compliance purposes.

Spousal Waiver of Joint and Survivor Pension

A person with a spouse, as defined under the PBA, at the date of retirement who is not living separate and apart, is required to elect a joint and survivor pension unless, the spouse and the member waive that entitlement by completing the prescribed form (Form 3).

It is important to note that the waiver is not effective unless it is delivered to the plan administrator or insurance company, where applicable, within the 12 month period immediately preceding the commencement of payment of the pension benefit as required by ss. 46(2) of the *Pension Benefits Act*. The waiver may be jointly cancelled by written and signed notice delivered before payment of the pension commences.

Spousal Waiver of Pre-retirement Death Benefit

In the case of pre-retirement death of the member, if the deceased member has a spouse, as defined under the PBA, who is not living separate and apart at the date of death, that spouse is entitled to the pre-retirement death benefit for the pension benefits accrued on or after January 1, 1987. The member and spouse can waive the entitlement by completing the prescribed waiver (Form 4) as provided under ss.48(14) of the PBA.

It is advisable that the member and/or the spouse obtain independent legal advice concerning their legislated rights and the legal effect of the waiver.

In either case, the spouse's eligibility to either of joint and survivor or pre-retirement death benefits (as defined under the PBA), depends on cohabitation of the member and the spouse at the time of retirement or death.

Superintendent's Form: The Investment Policy Return (IPR)

For the convenience of readers, the English version of the Investment Policy Return is reproduced here in its updated form. (The French version will be published in the next issue of the *PCO Bulletin*.)

When making an application to register a new pension plan, the application must include a completed Investment Policy Return (for details, please refer to the article *Common Problems to Avoid When Making an Application for Registration of a Pension Plan and a Plan Amendment* on page 31 of this issue).



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 3 - Pension Benefits Act, 1990
(Section 46 of the Act)

SPOUSAL WAIVER OF JOINT AND SURVIVOR PENSION

Name of member/former
member's spouse

I, _____,
am the spouse, within the meaning of the *Pension Benefits Act, 1990*, of

Name of member/
former member

_____ who is entitled to a pension benefit under the

Name of pension plan

_____.

I am aware that, in the absence of a waiver, a pension payable to a former member who has a spouse on the date that the payment of the first installment of the pension is due must be paid as a joint and survivor pension as required by section 44 of the *Pension Benefits Act, 1990*.

I understand that I may waive any right to a survivor pension of at least 60 per cent of my spouse's pension benefit should my spouse predecease me. By waiving my right, my spouse will be able to elect an alternative form of pension which will provide me with no survivor pension or a pension which is less than the 60 per cent minimum.

I hereby waive my right to a joint and survivor pension as required by section 44 of the *Pension Benefits Act, 1990*. The signature of my spouse, below, serves as an acknowledgement that he or she agrees to such a waiver.

I understand that we may revoke this waiver at any time prior to the date of the commencement of payment of my spouse's pension.

City or Town,
Province

Dated at _____ in the Province of _____

Day, Month, Year

this _____ day of _____, _____.

Signature of spouse

Witness to
signature of spouse

Signature of member
or former member

Witness to
signature of member
or former member

Prior to completing this form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.

NOTE: This waiver is not effective unless it is delivered to the Administrator or the insurance company, where appropriate, within the twelve month period immediately preceding the commencement of payment of the pension benefit as required by subsection 46(2) of the *Pension Benefits Act, 1990*.



SPOUSAL WAIVER OF PRE-RETIREMENT DEATH BENEFIT

Name of Member or
former member

hereinafter the "member" or "former member", and

Name of Spouse

hereinafter the "spouse", hereby certify that we are spouses within the meaning of
the *Pension Benefits Act, 1990*.

We understand that, in the absence of a waiver, if the member or former member dies,

- (a) prior to the payment of a deferred pension; or
- (b) where the member continues in his or her employment after the normal retirement date,
prior to the commencement of payment of pension benefits,

then the person who is the spouse of the member or former member at the date of his or her
death is entitled to receive a pre-retirement death benefit of either a lump sum payment or an
immediate or deferred life annuity from

Name of pension plan

at the date of the member or former member's death.

We understand that we may waive the right of the spouse to receive any pre-retirement death
benefit, in which case payment of this benefit will be made to either,

- (a) a beneficiary designated by the member or former member; or
- (b) the personal representative of the member or former member for distribution as part of
his or her estate.

Name of spouse

We hereby waive the right of _____
to receive any payment under section 48 of the *Pension Benefits Act, 1990*.

City or Town,
Province

Dated at _____ in the Province of _____

Day, Month, Year

this _____ day of _____, _____.

Signature of spouse

Witness to
signature of spouse

Signature of member
or former member

Witness to
signature of member
or former member

**Prior to completing this form, each party should consider obtaining independent legal
advice concerning their individual rights and the effect of this waiver.**



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

*Pension Benefits Act, 1990
Regulation 909*

INVESTMENT POLICY RETURN

*(To be submitted with the
Statement of Investment Policies and Goals)*

Instructions:

1. This return must be submitted for each pension plan required to be registered under the ***Pension Benefits Act***. It is accompanied by a Statement of Investment Policies and Goals, except for plans exempted under Instruction 2.
2. For plans completely invested in a fully insured contract and/or deposit administration general funds contract regulated by the ***Insurance Act*** or ***Canadian & British Insurance Companies Act (Canada)***, complete parts A and B. Under section 80 of Regulation 909, such pension plans are exempt from filing a Statement of Investment Policies and Goals.
3. For all other pension plans, complete Parts A & C.

PART A

Pension Commission of Ontario Registration Number: _____

Name of Employer/Sponsor: _____

Name of Pension Plan: _____

PART B

- I certify that:
- a) I am the duly appointed Administrator of the above pension plan.
 - b) this plan is completely invested in a fully insured contract and/or deposit administration general funds contract regulated by the ***Insurance Act*** or ***Canadian and British Insurance Companies Act (Canada)***.

Name (print)

Signature

Date

PART C

All statutory requirements listed in this Part must be reflected in the Statement of Investment Policies and Goals, and checked off on this Return. Pension plans completely invested in "pooled funds" should check off the relevant areas, and mark N/A on the lines corresponding to the non-applicable items. This Return **and** the Statement of Investment Policies and Goals must be submitted to the Pension Commission of Ontario.

Statutory Requirements	Check (<input checked="" type="checkbox"/>)	Pension Commission Use Only
1. Type of pension plan (Reg. 67(3))	<input type="checkbox"/>	
2. Nature of plan liabilities (Reg. 67(3))	<input type="checkbox"/>	
3. Rate of return expectations and asset mix policy (Reg. 67(3)(b))	<input type="checkbox"/>	
4. Investment portfolio diversification (Reg. 67(3)(a))	<input type="checkbox"/>	
5. Categories/sub-categories of investment and loans (Reg. 67(3)(c))	<input type="checkbox"/>	
6. Basis for valuation of investments not regularly traded (Reg. 67(3)(h))	<input type="checkbox"/>	
7. Policy regarding conflict of interest (Reg. 67(3)(d))	<input type="checkbox"/>	
8. Disclosure regarding conflict of interest (Reg. 67(3)(e))	<input type="checkbox"/>	
9. Lending of cash or securities (Reg. 67(3)(f))	<input type="checkbox"/>	
10. Retention/delegation of voting rights (Reg. 67(3)(g))	<input type="checkbox"/>	

I certify that:

- (a)

I am the duly appointed Administrator of this plan
- (b)

the Statement of Investment Policies and Goals was adopted on _____
(Date)
- (c)

the Statement of Investment Policies and Goals submitted with the Investment Policy Return complies with the requirements of the **Pension Benefits Act** and Regulation thereunder, and that the information contained therein is, to the best of my knowledge and belief, true and correct.

Name (print)

Signature

Date

Index of PCO Policies on the BBS

In the last issue of the *PCO Bulletin*, an index of 168 individual policies in WordPerfect 5.1 ® and 164 individual policies in ASCII were published and these are now available on the PCO Conference. The 43 new policies listed below were uploaded in April, 1994 bringing the total number of individual policies (in WordPerfect 5.1 ®) available on the PCO Conference to over 200.

Please complete the questionnaire in the Dec '93 - Jan '94 issue of the *PCO Bulletin* at page "BBS-2" and fax to the PCO to obtain a copy of the BBS/PCO Conference Information Package.

A050-103.EXE	POLICY: ACTUARIAL REPORTS actuarial assumptions guidelines - solvency valuations (correction to A050-102.EXE) effective December 1993 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 6)	F800-110.EXE	POLICY: FUNDING OF PLANS - contribution holidays and actuarial reports (Dec 1993 - Jan 1994 Bulletin 4/2 p. 25)
A400-850.EXE	POLICY: AMENDMENTS - registration of amendments, effective November 1, 1992 (Aug 1993 Bulletin 4/1 p. 29)	F800-125.EXE	POLICY: FUNDING OF PLANS - contributions in-kind not permitted effective March 25, 1993 (Aug 1993 Bulletin 4/1 p. 27)
A500-203.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - late filing fees, O. Reg. 909, ss. 18 (Aug 1993 Bulletin 4/1 p. 32)	F800-500.EXE	POLICY: FUNDING OF PLANS - failure to remit member contributions (Aug 1993 Bulletin 4/1 p. 23)
A500-800.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - which AIRs required at wind up (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	F800-800.EXE	POLICY: FUNDING OF PLANS - re-filing Election Report (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)
A700-175.EXE	POLICY: ASSETS - interim transfer of assets on purchase and sale (Aug 1993 Bulletin 4/1 p. 31)	F800-801.EXE	POLICY: FUNDING OF PLANS - no suspension of contributions in defined contribution plans (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)
B100-175.EXE	POLICY: BENEFITS - pension plans are not flexible benefit plans (Aug 1993 Bulletin 4/1 p. 7)	F800-950.EXE	POLICY: FUNDING OF PLANS - cessation of member contributions (Aug 1993 Bulletin 4/1 p. 31)
B100-275.EXE	POLICY: BENEFITS - indexing (Dec 1993 - Jan 1994 Bulletin 4/2 p. 25)	F800-975.EXE	POLICY: FUNDING OF PLANS - no provision to amortize negative solvency balance, O. Reg. 909 s. 5 (Aug 1993 Bulletin 4/1 p. 33)
B100-400.EXE	POLICY: BENEFITS - union membership as condition for benefit improvement (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	G100-100.EXE	POLICY: GRADUAL AND UNIFORM - age-related benefit formulae, PBA ss. 11(1) & (4), published BBS - Jan 1994 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 14)
B100-500.EXE	POLICY: BENEFITS - settlement of benefits (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)	I150-700.EXE	POLICY: INFORMATION - items marked "Private and Confidential" (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)
B100-850.EXE	POLICY: BENEFITS - survivor benefit waived (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	I150-800.EXE	POLICY: INFORMATION - member's right to information, annual statements, termination statements, notices (Aug 1993 Bulletin 4/1 p. 1)
F100-900.EXE	POLICY: FINANCIAL STATEMENTS - requirement for auditor's report O. Reg. 909, s. 76 and s. 80 (Aug 1993 Bulletin 4/1 p. 30)	I300-100.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - how to change province of registration (Dec 1993 - Jan 1994 Bulletin 4/2 p. 17)

I400-400.EXE	POLICY: INVESTMENT OF PENSION FUNDS - investment in a limited partnership, O. Reg. 909, s. 70 and s. 71 (Aug 1993 Bulletin 4/1 p. 31)	P300-700.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) - PROCEDURES - pre-hearing conference procedures (Aug 1993 Bulletin 4/1 p. 23)
L050-600.EXE	POLICY: LIFE INCOME FUND - direct transfer from plan to LIF, Income Tax Act (Canada), s. 147.3 effective June 10, 1993 (Aug 1993 Bulletin 4/1 p. 8)	P300-800.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) - PROCEDURES submission deadlines for PCO monthly meetings (Dec 1993 - Jan 1994 Bulletin 4/2 p. 6)
L050-650.EXE	POLICY: LIFE INCOME FUND - minimum and maximum withdrawals (amendment to L050-500) (available in WordPerfect v5.1 (EXE) format only) (Dec 1993 - Jan 1994 Bulletin 4/2 p. 17)	S900-300.EXE	POLICY: SURPLUS - surplus distribution to beneficiaries as cash on wind up, effective December 17, 1992 (Aug 1993 Bulletin 4/1 p. 7)
L050-701.EXE	POLICY: LIFE INCOME FUND - spousal pre-retirement death benefit, in a LIF, O. Reg. 909, s. 18 and 19, and Schedule 1 (Aug 1993 Bulletin 4/1 p. 32)	S900-750.EXE	POLICY: SURPLUS - remaining in a wound-up plan (Dec 1993 - Jan 1994 Bulletin 4/2 p. 6)
L100-050.EXE	POLICY: LOCKING IN - shortened life expectancy (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	T500-850.EXE	POLICY: TRANSFER RIGHTS - transfer rights outside Canada PBA 1990 s. 42 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 7)
P200-125.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessment based on last certificate O. Reg. ss. 3(1), s. 37 (Aug 1993 Bulletin 4/1 p. 32)	T800-400.EXE	POLICY: TRANSFER VALUES - recalculation of transfer value not permitted in most instances O. Reg. 909, ss. 19(1), ss. 24(11.1) (Aug 1993 Bulletin 4/1 p. 30)
P200-150.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessments subject to retail sales tax, effective May 19, 1993 (Aug 1993 Bulletin 4/1 p. 8)	T800-500.EXE	POLICY: TRANSFER VALUES - updated CIA transfer value recommendations effective January 1, 1994 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 24)
P200-175.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessment not to be paid by actuarial gain (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)	T800-900.EXE	POLICY: TRANSFER VALUES - where pensions indexed (Dec 1993 - Jan 1994 Bulletin 4/2 p. 25)
P200-400-EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - determining PBGF assessment base (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)	T800-950.EXE	POLICY: TRANSFER VALUES - where plan underfunded (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)
P300-100.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) - PROCEDURES - applications before the Commission - decision-making process (Aug 1993 Bulletin 4/1 p. 25)	T900-300.EXE	POLICY: TRUSTEE responsibilities of fund trustee - transfer of assets from between plans, PBA, ss. 22(8) (Aug 1993 Bulletin 4/1 p. 32)
P300-300.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES - computer-generated forms (Dec 1993 - Jan 1994 Bulletin 4/2 p. 28)	W100-302.EXE	POLICY: WIND UP - notice and consent requirements on partial wind up, PBA, ss. 68(2), (3), 78(2), 79, 112(3), O. Reg. 909, ss. 8(1)(b)(iii) (Aug 1993 Bulletin 4/1 p. 28)

Cumulative Index

Last year, we revised the content of the index to include summaries of announcements, administrative practices, Regulations and Commission decisions arising from hearings. This year, the index has been modified further by deleting all items published in 1990 with the exception of Commission decisions. (The summaries of court decisions will not be included in this and future indices.)

The cumulative index now includes published material for 1991, 1992 and 1993. The articles are listed alphabetically and by year in reverse chronological order. (The last cumulative index appeared in the March 1993 issue (Vol.3, Issue 4).

<u>Announcements</u>	<u>Date</u>	<u>Volume/Issue</u>	<u>Page</u>
1993			
- Booklets for Members May Be Ordered	March/93	3/4	14
- Corrections of LIF Article	March/93	3/4	14
- Cumulative Index	March/93	3/4	26
- Impact of Regulation on Financial Statement and SIP&G Filing Requirement	March/93	3/4	13
- Impact of Solvency Regulation on Financial Statement Filing Requirements	March/93	3/4	14
- Impact of Solvency Regulation on PBGF Assessments	March/93	3/4	14
- Income Tax Act (Canada) Requirement to Attach Pensions in Pay	March/93	3/4	13
- Leigh Instruments Ltd Court Decision	March/93	3/4	14
- PCO Administrative Practices and Policies Manual	March/93	3/4	14
- Plan Registration and Annual Filings - Fee Increase Changes	March/93	3/4	13
- Premier Bob Rae Announces Government Reorganization	March/93	3/4	11
- Reminder to Report Non-compliance to Superintendent	March/93	3/4	11
- Solvency Regulation Impacts AIR Filings	March/93	3/4	13
- Status of the Consolidation of the PBA and Regulation 909	March/93	3/4	11
- Basic Pension Facts - New Feature in Next Issue	August/93	4/1	9
- Bulletin Board Replaces Rapidfax Network	August/93	4/1	9
- CAG 5 and Pension Plan Document Checklist - Status of French Version	August/93	4/1	9
- CAPSA Discussion Paper - Individual Pension Plans	August/93	4/1	8
- Distribution of Surplus to Plan Beneficiaries on Wind Up	August/93	4/1	7
- LIF - Minimum and Maximum Withdrawal Tables	August/93	4/1	8
- LIF Option and Revenue Canada Update	August/93	4/1	8
- PBGF Assessments Subject to Retail Sales Tax	August/93	4/1	8
- PCO Mailing List Review	August/93	4/1	9
- PCO Members Booklet In Demand	August/93	4/1	9
- Proposed Multilateral Agreement Released for Discussion	August/93	4/1	7
- Office Consolidation of PBA and Regulation 909 Available	August/93	4/1	9
- Regulation 909 - Status of French Version	August/93	4/1	9
<u>Special Announcements:</u>			
- AIR - Schedule B Instructions and Schedule B	August/93	4/1	11
- PBGF Assessment Changes	August/93	4/1	10
- Superintendent Notice - AIR Requirements	August/93	4/1	18
- Actuarial Assumption Guidelines - Solvency Valuations	Dec/93-Jan/94	4/2	6
- Deadlines for Submission of Applications to Commission	Dec/93-Jan/94	4/2	6
- Mailing List Review and Cost Saving Measures	Dec/93-Jan/94	4/2	6
- New Commission Chair to be Appointed	Dec/93-Jan/94	4/2	6
- PCO Participates in Pension Conference	Dec/93-Jan/94	4/2	6

1992

- Accounting and Audit Advisory Committee Established	February/92	2/4	6
- AIR - PCO and Revenue Canada - Do Not Confuse	February/92	2/4	7
- Director, Secretariat Announces Departure	February/92	2/4	6
- Extension of Deadlines for 1992	February/92	2/4	4
- Fee Increases for 1992	February/92	2/4	3
- Financial Reporting Consultant Joins PCO	February/92	2/4	6
- Cumulative Index	February/92	2/4	15
- Revised Statutes of Ontario now Released	February/92	2/4	3
- Salvation Army Court Decision	February/92	2/4	5
- Solvency Valuation and the PBGF - Policy Announcement	February/92	2/4	6
- Surplus Withdrawal Regulation	February/92	2/4	4
- Teachers' & Public Service Pension Plans - Investment Regulation	February/92	2/4	5
- Advisory Committees Expanded	June/92	3/1	9
- HOOPP/OHA Court Case	June/92	3/1	10
- How Pension Legislation affects locked-in RRSP	June/92	3/1	6
- New Actuarial Services Branch Created	June/92	3/1	8
- Ontario Investment Fund	June/92	3/1	7
- PCO Policy and Research Branch	June/92	3/1	8
- Status of Proposed Auditing and Accounting Regulations	June/92	3/1	6
- Court Surplus Applications Omit PCO	October/92	3/2	7
- Information Available to Administrators	October/92	3/2	7
- Responsibilities of the Administrator	October/92	3/2	6
- Revised Checklist for Registration of Pension plans, Registered Plan Texts and Other Amendments	October/92	3/2	6
- Role of the Administrator Defined	October/92	3/2	6
- Change to Actuarial Review Procedure	December/92	3/3	11
- Selection of Administrators for Insolvencies	December/92	3/3	11

1991

- Actuarial Advisory Committee Update	March/91	2/1	7
- Extension of Deadlines for 1991	March/91	2/1	5
- Fee Increases for 1991	March/91	2/1	5
- Quebec Members (2nd notice)	March/91	2/1	7
- Sharing of Surplus - the Quebec Approach	March/91	2/1	7
- CAPSA/CPC/CIA Sponsor Fall Forum	July/91	2/2	5
- Canadian Pension Conference - Launches Lecture Series	July/91	2/2	6
- New Superintendent Appointed	July/91	2/2	4
- Pregnancy and Parental Leave - Plan Amendment Required	July/91	2/2	4
- Quebec Supplemental Pension Plans Act - Ontario Plans With Quebec Members (3rd notice)	July/91	2/2	5
- Pregnancy and Parental Leave - Correction	November/91	2/3	10
- Revised AIR Now Law	November/91	2/3	10
- Staff Appointments	November/91	2/3	11

Administrative Practices

1993

- Refunds of Employer Overpayment	March 93	3/4	15
- Contribution In Kind	August 93	4/1	27
- Failure to Remit Member Contributions	August 93	4/1	23
- Pre-hearing Conference Procedures	August 93	4/1	23
- Surplus Attributable to Employee and Employer Contributions			
On Plan Wind Up	August 93	4/1	27
- Written Notice of Proposal for Partial Wind Up	August 93	4/1	23
- Age-related Benefit Formulae Under Subsections 11(1) & 11(4)	Dec/93-Jan/94	4/2	14

- Class of Employee - Clarification	Dec/93-Jan/94	4/2	12
- Guideline - Notice of Wind Up of a Pension Subsection 68(2)	Dec/93-Jan/94	4/2	15
- Merger of Plans - Merger Policy	Dec/93-Jan/94	4/2	8

1992

- Change of Carrier of Plan Assets	February/92	2/4	10
- Extension of Contribution Deadlines in Active DB Plans	February/92	2/4	10
- Distribution of Surplus on Plan Wind Ups	June/92	3/1	12
- Early Retirement Windows	June/92	3/1	11
- Employer Contributions Based on Members' RRSP Contributions	October/92	3/2	7
- Distribution of Surplus to an Employer on Wind up	October/92	3/2	8
- Identifying a Successor Pension Plan Under Section 80	October/92	3/2	8
- Procedures for Applications Pursuant to Subsection 7a(2)	October/92	3/2	13

1991

- Wind-up Checklist to be Filed	March/91	2/1	1
- Benefits Improvements in Ongoing Plans	July/91	2/2	10
- Wind-up Checklist Now Available	July/91	2/2	9
- Actuarial Reports and Cost Certifications - New Submission	November/91	2/3	13
- Conversion from DB to DC - Guidelines	November/91	2/3	13
- Refund of Employee Contributions - Guidelines	November/91	2/3	13
- Surplus Withdrawal Application on Wind Up - Guidelines	November/91	2/3	12

Questions & Answers

1993

- LIF - Other Jurisdictions	March 93	3/4	17
- LIF - Survivor Benefit Entitlements	March 93	3/4	16
- Portability of Locked-in Benefits	March 93	3/4	17
- Surplus Withdrawal Ongoing and on Termination	March 93	3/4	17
- Transfer Benefits to Locked-in RRSP	March 93	3/4	17
- Contribution Suspension for Employees	August 93	4/1	31
- Investment - Limited Partnership	August 93	4/1	31
- Late Filings Fees for Defined Benefit Plans	August 93	4/1	32
- LIF - Surviving Spouse Entitlement	August 93	4/1	32
- PBGF Assessment - Cost Certificates as Last Report	August 93	4/1	32
- Plan Funding - Financial Statements	August 93	4/1	30
- Recommendations for the Computation of Minimum Transfer Values for Pensions	August 93	4/1	30
- Solvency Deficiencies - Negative Balance	August 93	4/1	33
- Transfer of Assets From Plan to Plan	August 93	4/1	32
- Transfer of Plan Assets to Purchaser	August 93	4/1	31
- AIR Filed Before Wind Up Approved	Dec/93-Jan/94	4/2	27
- Commuted Value to Former Member When Plan is Underfunded	Dec/93-Jan/94	4/2	27
- Commuted Value When Joint and Survivor Benefits are Waived	Dec/93-Jan/94	4/2	27
- Determining Member's Disabilities	Dec/93-Jan/94	4/2	27
- Elimination of Indexing	Dec/93-Jan/94	4/2	25
- Employer Contribution Holidays Between Valuation Reports	Dec/93-Jan/94	4/2	25
- Generation of PBA Forms	Dec/93-Jan/94	4/2	28
- Indexed Benefits at Termination	Dec/93-Jan/94	4/2	25
- PBGF Assessment - Past Service Liabilities	Dec/93-Jan/94	4/2	26
- PBGF Assessment Costs Paid by Actuarial Gains	Dec/93-Jan/94	4/2	26
- PCO Submissions - Confidentiality	Dec/93-Jan/94	4/2	26
- Revising Election Reports	Dec/93-Jan/94	4/2	26
- Sole or Last Member Terminates Employment - Subsection 70(2)	Dec/93-Jan/94	4/2	26
- Temporary Suspension of Employer Contributions in a Defined Contribution Plan	Dec/93-Jan/94	4/2	27
- Union Membership as a Requirement for Benefit Improvements	Dec/93-Jan/94	4/2	27

1992

- Conversion - Member Options	February /92	2/4	11
- Derivative Securities	February /92	2/4	11
- "Ethical" Investing	February /92	2/4	11
- PBGF Assessment as Administrative Expense	February /92	2/4	11
- PBGF Assessment When Employer Insolvent	February /92	2/4	11
- Pensions During Wind Up	February /92	2/4	11
- Pregnancy & Parental Leave - Conditional Contributions	February /92	2/4	11
- Pregnancy & Parental Leave - Continuation of Contributions	February /92	2/4	11
- Pregnancy & Parental Leave - Plan Sponsor's Obligations	February /92	2/4	11
- Pregnancy & Parental Leave - Whose Legislation	February /92	2/4	11
- Year's Maximum Pensionable Earnings - 1992 Figure	February /92	2/4	10
- Collecting Unremitted Contributions	June /92	3/1	12
- "Finders fees" - Are They Payable Out of Pension Fund	June /92	3/1	12
- Pension Plan with No Members - Wind up Requirements	June /92	3/1	12
- RRSP - Is Interest Locked In	June /92	3/1	12
- Granting Contribution Holidays From Surplus	October /92	3/2	14
- Pre and Post 1987 Vesting and Locking in Rules	October /92	3/2	14
- PCO Authority to Charge Interest on Late AIR Filing Fees	October /92	3/2	14
- Status of Employee Contributions - Deduction to Remittance	October /92	3/2	14
- Life Annuity - Use of Sex Differentiated Mortality Tables	December /92	3/3	17
- RRSP - When Can They be Annuitized	December /92	3/3	17
- RRSP - Annuitizing Before Maturity Date of Investment	December /92	3/3	17

1991

- Bridge Benefit - What is it	March /91	2/1	14
- Information - What Must Administrator Automatically Provide	March /91	2/1	13
- Information - What Must Administrator Provide on Request	March /91	2/1	13
- Information - Who Can Get Information	March /91	2/1	13
- Interest - Average Fund Rate	March /91	2/1	13
- Interest - Minimum and Maximum	March /91	2/1	13
- Interest - Policy for Crediting Employee Contributions	March /91	2/1	13
- Mandatory Retirement - Effect of Supreme Court Decision	March /91	2/1	14
- Normal Retirement Date - What is it	March /91	2/1	14
- Plan Records - How Long to Keep	March /91	2/1	14
- Policy Statement 2 (Purchase & Sale) - does it apply to Corporate	March /91	2/1	12
- Regulatory and Superintendent's Forms - Difference	March /91	2/1	12
- Unlocking Funds - Leaving the Country	March /91	2/1	13
- Void and Adverse Amendments - Difference	March /91	2/1	13
- Additional Voluntary Contributions - Refund to Active Members	July /91	2/2	10
- Administrative Expenses - Negotiating Fees	July /91	2/2	10
- Administrative Expenses - Paid on a Regular Basis	July /91	2/2	10
- Amendment - Relating to Restated Plan Text	July /91	2/2	10
- Commuted Value - When to Compare Contributions	July /91	2/2	10
- Compliance Assistance Guideline #4 - Surplus	July /91	2/2	11
- Late Filing Fees	July /91	2/2	11
- Locked-in RRSPs - Earlier to Purchase Life Annuity	July /91	2/2	11
- Marriage Breakdown - additional Choices for non-member Spouse	July /91	2/2	11
- Marriage Breakdown - Choices for Spouses	July /91	2/2	11
- Mortality Tables - Which to Use	July /91	2/2	10
- PBGF Assessment Fees	July /91	2/2	11
- Refund of Employee Contributions	July /91	2/2	11
- Compliance Assistance Guideline #4 - Surplus - Clarification	November /91	2/3	15
- Documents on File with PCO - Other Jurisdictions	November /91	2/3	15
- Late Filing Fees - Forms Not Received From PCO			
- Reorganization	November /91	2/3	15
- Province of Registration - When to Change	November /91	2/3	15

Commission Decisions

1993

- Stelco P.B.A. R.S.O. 1990, Subsection 89(8) (Preliminary Hearing Decision dated December 4, 1992)	March 93	3/4	24
- Stelco P.B.A. R.S.O. 1990, Subsection 89(8) (Partial Wind Up Decision dated July 7, 1993)	August 93	4/1	40
- Stelco P.B.A. R.S.O. 1990, Subsection 89(8) (Veinot Decision dated March 18, 1993)	August 93	4/1	48
- Western Star Trucks Inc	Dec/93-Jan/94	4/2	35

1992

- ArrowHead Metals Ltd. (decision under sections 79 and 80 of the PBA, 1987, and paragraph 7a(2)(c) of Reg.708/87	June/92	3/1	19
- Brewers Retail Inc. (decision under section 87 of the PBA, R.S.O. 1990)	October/92	3/2	24
- Stelco Inc. (decision under section 69 of the PBA, R.S.O. 1990)	October/92	3/2	29
- S. Allan and Price Waterhouse Administrator of the MCC Plan, and Massey Ferguson Industries Ltd. (decision under section 89 of the PBA, R.S.O. 1990)	October/92	3/2	36
- Saynor Varah Inc. and Affiliated Companies (decision under sections 78 and 79 of the PBA, R.S.O. 1990, c.P.8 and 7a(1)(b) of Reg. 743/91)	December/92	3/3	21

1991

- General Motors of Canada (decision under section 88 of the PBA, 1987	March/91	2/1	17
- Cluett Peabody	July/91	2/2	15
- CUPE, Ontario Nurses Association, OPSEU and SEIU versus Ontario Hospital Association	November/91	2/3	16

1990

- Otis Canada Inc., pension plan for Draftsmen Local 164 (decision under subsections 79(1) and 80(4) of the PBA, 1987 and clause 7a(2)(c) of the Regulation	February/90	1/1	16
- Otis Canada Inc., pension plan for Steel Workers Local 7062 (decision under subsection 82(1) of the PBA, 1987	February/90	1/1	11
- Hospitals of Ontario Pension Plan (decision under section 8(1)(e) of the PBA, 1987	December/90	1/4	12

Superintendent of Pensions - Notices and Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) *The Pension Plan for the Non-Executive Employees of MacKinnon-Moncur Limited* (C-12646), December 22, 1993
- 2) *Retirement Plan for the Employees of Bayweb Limited and Muskoka Web Limited* (C-17781), Amended January 14, 1994
- 3) *Staff Pension Plan for the Employees of Contract Hardware Specialists (1974) Limited* (C-103908), January 31, 1994
- 4) *T.A.G. Apparel Group Inc. Pension Plan for Salaried Employees of Penmans Apparel Inc.* (C-101674), February 8, 1994
- 5) *T.A.G. Apparel Group Inc. Pension Plan for Hourly Paid Staff of Penmans* (C-101676), February 8, 1994
- 6) *T.A.G. Apparel Group Inc. Pension Plan for Van Raalte Employees* (C-100740), February 9, 1994
- 7) *Pension Plan for Management, Supervisory, Sales and Clerical Employees of Harvey Woods Limited* (C-13692), February 9, 1994
- 8) *T.A.G. Apparel Group Inc., Pension Plan for Salaried Employees of Buckeye Industries Ltd.* (C-14278), February 10, 1994
- 9) *Pension Plan for Employees of A.C. Wickman Machine Tool, a Division of Williams & Wilson Ltd.* (C-104425), February 21, 1994

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) *Imperial Optical Company Ltd. Employees Pension Plan* (C-17745), (effective December 14, 1992), December 1, 1993
- 2) *Retirement Plan for the Employees of Lomar Mechanical Corporation Limited* (C-103969), (effective December 31, 1990), December 10, 1993

- 3) *The Pension Plan for Paja Group Inc.* (C-15016), (effective December 14, 1992), December 10, 1993
- 4) *Pension Plan for the Employees of O'Neill-Bernhardt Limited* (C-13683), (effective January 31, 1991), December 10, 1993
- 5) *Revised Employees' Pension Plan for Employees of Matrix Steel Corp.* (C-19997), (effective December 17, 1992), December 10, 1993
- 6) *The Pension Plan for Standard Optical Company Limited* (C-18078), (effective December 14, 1992), January 26, 1994
- 7) *Retirement Plan for the Employees of Delmar Contracting Limited* (C-8691), (effective April 23, 1992), January 26, 1994
- 8) *Retirement Income Plan for Salaried Employees of Savage Shoes Limited* (C-18831), (effective May 29, 1989), January 26, 1994
- 9) *Pension Plan for Hourly Employees of Savage Shoes Limited* (C-17059), (effective May 29, 1989), January 26, 1994
- 10) *Imperial Optical Company Ltd. and Subsidiary and Affiliated Companies Pension Plan* (C-8230), (effective December 14, 1992), February 8, 1994

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1994 Commission Meeting Dates

The Pension Commission will convene on the following Thursdays in 1994:

March 24, April 28, May 26, June 23, July 21, September 22, October 20, November 17, December 15, 1994. Please note: the August 25th meeting has been cancelled.

Deadlines for the Submission of Applications to the Commission

The announcement that appeared in the Dec '93 - Jan '94 issue of the *PCO Bulletin* which set out Commission meeting dates and submission deadline dates continues in effect **except for the submission deadline of May 25 for the August 25 Commission meeting which, as noted above, has been cancelled.** Those making submissions for consideration by the Commission at its monthly meetings should plan accordingly.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Acting Chair
Darcie L. Beggs
M. David R. Brown
Kathryn M. Bush
Donald G. Collins
Robert F. Nickerson
Joyce A. Stephenson
Monica J. Townson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. requested hearings with respect to a Notice of Proposal to Make an Order on each of the above plans issued by the Superintendent of Pensions March 3, 1993 pursuant to s. 69 of the PBA that the plans be wound up in part effective September 27, 1991. A pre-hearing conference held October 1, 1993 joined the two hearings. Hearing dates: May 2, 3, 4, 10, 11, and 12, 1994. Argument: June 7, 8, and 9, 1994.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 regarding Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die on consent.

International Playing Card Company Limited Pension Plan for Bargaining Unit Employees (C-4609)

Application pursuant to ss. 8(2) of Reg. 909, R.R.O. 1990, as amended by O.R. 743/91 for the consent of the Commission to a payment of surplus to International Playing Card Company Limited. This application follows a hearing before Mr. Justice Carter which was adjourned October 21, 1992 until PCO consent was received. Pre-hearing conference held July 29, 1993. Based on written submissions, a panel of the Commission consented to the application. The Decision is published in this issue of the *PCO Bulletin* at page 51.

TIE/communications Canada Inc. Pension Plan for Employees (C-9884)

A pre-hearing conference was held January 7, 1994, before Ms. K. Bush, presiding member, regarding an application for Commission consent to the payment of surplus on wind up to TIE/communications Canada Inc. Hearing dates to be set.

Commission Decisions - Applications Approved Since November, 1993

Applications Approved Under s. 8 of Reg. 909, R.R.O. 1990, as amended, and ss. 78(1) of the PBA - Request for Consent to Payment of Surplus Prior to a Court Application

At the Commission meeting held December 16, 1993, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) *Pension Plan for Toronto Hourly-Rated Employees of Central Soya of Canada Ltd. (C-19745)*

Payment of surplus to Central Soya of Canada Ltd. from the Pension Plan for Toronto Hourly-Rated Employees of Central Soya of Canada Ltd., Registration Number C-19745, in the amount of \$135,786 as at May 6, 1991.

b) *Contributory Pension Plan for Salaried Employees of the Griffith Mine, Stelco Inc. (C-12471)*

Payment of surplus to The Griffith Mine, formerly a Division of Stelco Inc. from the Contributory Pension Plan for Salaried Employees of the Griffith Mine, Stelco Inc., Registration Number C-12471, in the amount of \$4,068,919 as at June 30, 1993.

c) *Pension Plan for Hourly-Paid Employees of Robertshaw Controls Canada Inc., Oakville Division (C- 14442)*

Payment of surplus to Robertshaw Controls Canada Inc. from the Pension Plan for Hourly-Paid Employees of Robertshaw Controls Canada Inc., Oakville Division, Registration Number C-14442, in the amount of \$385,908.15 as at June 30, 1993, which consent shall not be effective until the administrator satisfies the Commission that all benefits (including a proposed adjustment to certain members amounting to \$4,199.48 as of November 30, 1993), benefit enhancements, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Under clause 8(1)(b) of Reg. 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and ss. 78(1) of the PBA - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held November 25, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) *Pension Plan for Employees of Wm. Parker Planning Consultants Inc. (C-15954)*

Payment of surplus to Wm. Parker Planning Consultants Inc. from the Pension Plan for Employees of Wm. Parker Planning Consultants Inc., Registration Number C-15954, in the amount of \$101,852 as at April 30, 1992 which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) *The Employees Retirement Plan of Hoskins Alloys of Canada Limited (C-11558)*

Payment of surplus to Hoskins Alloys of Canada Limited from the Employees Retirement Plan of Hoskins Alloys of Canada Limited, Registration Number C-11558, in the amount of \$115,296 as at September 1, 1990, the effective date of the partial wind up, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) *Retirement Income Plan of United Dominion Industries Limited (C-4170)*

Payment of surplus to United Dominion Industries Limited from the Retirement Income Plan of United Dominion Industries Limited, Registration Number C-4170, in the amount of \$27,300,000 as at July 31, 1993, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Reasons for Decision will be published when available.

d) *Pension Plan for Employees of Head/Tyrolia Sports Canada Inc. (C-103904)*

Deny Commission consent to the payment of surplus to Head/Tyrolia Sports Canada Inc. from the Pension Plan for Employees of Head/Tyrolia Sports Canada Inc., Registration Number C-103904, in the amount of \$1,449,256 as at July 31, 1992. The statutory precondition of notice was not met as the employee notice issued under subsection 78(2) of the PBA did not contain full disclosure.

At the Commission meeting held January 27, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) *Robert E. Skelly Limited Executive Pension Plan (C-15980)*

Payment of surplus to Robert E. Skelly Limited from the Robert E. Skelly Limited Executive Pension Plan, Registration Number C-15980, in the amount of \$1,057,080 as at December 1, 1991.

b) *University of Toronto Pension Plan for Designated Employees (C-100892)*

Payment of surplus to University of Toronto from the University of Toronto Pension Plan for Designated Employees, Registration Number C-100892, in the amount of \$17,595 as at July 1, 1990.

c) *Pension Plan for Employees of Recognition Canada Inc. (C-15315)*

Payment of surplus to Recognition Canada Inc. from the Pension Plan for Employees of Recognition Canada Inc., Registration Number C-15315, in the amount of \$445,754 as at May 1, 1993.

d) *Jordan & Ste. Michelle Cellars Ltd. Retirement Plan for Salaried Employees (C-2455)*

Payment of surplus to 151435 Canada Ltd. (formerly Jordan & Ste. Michelle Cellars Ltd.) from the Jordan & Ste. Michelle Cellars Ltd. Retirement Plan for Salaried Employees, Registration Number C-2455, in the amount estimated to be \$975,231.71 as at July 1, 1993, (which is 50% of the surplus of \$1,659,774 as at June 30, 1986 plus investment earnings to the date of payment less \$100,000 expenses). This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Application for Surplus Withdrawal Matters - Continuing Pension Plan: ss. 78(1) PBA & s.10 of Regulation 909, R.R.O. 1990, as amended

At the Commission meeting held December 16, 1993, pursuant to ss. 78(1) of the PBA and s.10 of the Reg., the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment from a continuing plan:

a) *Pension Plan for Designated Employees of Lawrence A. Brenzel Limited (C-15645)*

In light of the fact that the requirement of clause 79(1)(b) had been met, the Commission consented to payment of surplus from a continuing pension plan to Lawrence A. Brenzel Limited from the Pension Plan for Designated Employees of Lawrence A. Brenzel Limited, Registration Number C-15645, in the amount of \$1,271,000 as at April 30, 1992.

Applications Approved under ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held January 27, 1994, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) *Pension Plan for Employees of Honda Canada Inc. (C-12135)*

Refund of Class 2 members' required contributions from the Pension Plan for Employees of Honda Canada Inc., Registration Number C-12135, in the aggregate amount of \$130,422 as at November 1, 1991 plus credited interest to the date of payment on condition that the employer will fund the going concern deficit of \$228,781, as calculated by a valuation completed at November 25, 1992, in one lump sum prior to or at the time of the refund.

Applications Approved under s. 105 and ss. 78(4) of the PBA - Extension of Time and Return of Overpayment

At the Commission meeting held December 16, 1993, the Commission consented pursuant to s. 105 of the PBA to an extension of time for filing an application and pursuant to ss. 78(4) of the PBA to the refund of overpayments as follows.

a) *The Pension Plan for Employees of NORR Group Consultants Limited and Participating Companies (C-11302)*

1. Refund of an overpayment in the amount of \$258,000 to NORR Group Consultants Limited from The Pension Plan for Employees of NORR Group Consultants Limited and Participating Companies, Registration Number C-11302.
2. (a) Extend the time limit for filing an application for the refund of an overpayment in the amount of \$89,785; and,
(b) Refund of an overpayment in the amount of \$89,785.

At the Commission meeting held January 27, 1994, the Commission consented pursuant to s. 105 of the PBA to an extension of time for filing an application and pursuant to ss. 78(4) of the PBA to the refund of an overpayment as follows:

a) *Hodgson Robertson Laing Limited Pension Plan for Employee J. Warren Laing (C-19064)*

1. Extend the time limit from the plan's fiscal years 1988 and 1989 to its 1993 fiscal year for filing an application for the refund of an overpayment of \$26,771 in 1988 and \$26,771 in 1989;
2. Refund of an overpayment in the amount of \$26,771 made in 1988 and \$26,771 made in 1989 plus investment earnings earned on such amounts to the date of payment from the Hodgson Robertson Laing Limited Pension Plan for Employee J. Warren Laing, Registration Number C-19064.

Application Approved under s. 105 PBA - Request for Extension of Time Limit Imposed by ss. 67(1) of Reg.

At the Commission meeting held November 25, 1993, the Commission consented to an extension of the time limit imposed on conforming pension fund investments pursuant to subsection 67(10) of the PBA.

a) *Pension Fund for Salaried Employees of Canada Forgings Inc. (C-19824) and Pension Fund for Members of CAW Local 125 of Canada Forgings Inc. (C-7220)*

Consent to an extension to October, 1996, of the time limit imposed on conforming pension fund investments pursuant to subsection 67(10) of Regulation 909, R.R.O. 1990, with respect to the Pension Fund for Salaried Employees of Canada Forgings Inc., Registration Number C-19824, and the Pension Fund for Members of CAW Local 125 of Canada Forgings Inc., Registration Number C-7220, based on the amended application for the redemption of 25,000 preferred shares as outlined in the following schedule:

January, 1995	3,000 shares
April, 1995	3,000 shares
July, 1995	3,000 shares
October, 1995	3,000 shares
January, 1996	3,000 shares
April, 1996	3,000 shares
July, 1996	3,000 shares
October, 1996	4,000 shares

Pension Benefits Guarantee Fund ("PBGF")

On November 25, 1993, the Commission, pursuant to ss. 90(1) of the PBA, issued Notices of Proposal to make a Declaration pursuant to ss. 83(1) of the PBA that the PBGF applies to the following pension plans:

a) *Pension Plan for Hourly Employees of Savage Shoes Limited (C-17059)*

On January 27, 1994, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans:

a) *Pension Plan for Hourly Employees of Savage Shoes Limited (C-17059)*

b) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*

On November 25, 1993, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under s. 34 of the Reg. Any money not required to provide such benefits shall be returned to the PBGF.

a) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905)*

Allocate from the PBGF and pay to The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955, Registration Number C-5905 (the "Pension Plan"),

- 1) a payment not to exceed a total of \$45,961.04 in respect of pensions provided under the Pension Plan for the period from March 1, 1993 to October 31, 1993; and
- 2) monthly payments not to exceed \$6,200 for pensions provided after November 1, 1993.

On January 27, 1994, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under s. 34 of the Reg. Any money not required to provide such benefits shall be returned to the PBGF.

a) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*

allocate from the PBGF and pay to the Sound Insight Limited Pension Plan for Executive Employees, Registration Number C-18819, the amount of \$43,415.01 as at December 31, 1993 plus interest at the rate of 10.5% per annum to the date of payment from the PBGF.

Decisions

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8

AND

IN THE MATTER OF an Application by International Playing Card Company Limited for the consent of the Pension Commission of Ontario to the payment of surplus from the International Playing Card Company Limited Pension Plan for Bargaining Unit Employees, Registration Number C-4609

BETWEEN:

International Playing Card Company Limited Applicant

AND

National Automobile, Aerospace and Agricultural Implement
Workers Union of Canada (CAW - Canada) and its Local 195 Respondent

Pre-hearing Conference: Eileen E. Gillese, Vice Chair
Held: July 29, 1993, Toronto, Ontario

Hearing Panel: M. Joseph Regan, Chair
Kathryn Bush
Donald Collins
Joyce Stephenson
Monica Townson

Reasons for Decision

Nature of the Application

International Playing Card Company Limited (the "Applicant") applied to the Pension Commission of Ontario (the "Commission") for consent to payment of the surplus in the International Playing Card Company Limited Pension Plan for Bargaining Unit Employees C-4609 (the "Plan") in the amount of \$749,314 as at September 30, 1989, plus investment earnings thereon to the date of payment.

The application was brought pursuant to sections 78 and 79 of the Pension Benefits Act, R.S.O. 1990 c. P.8 (the "Act") and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended. The Applicant had applied to the Ontario Court (General Division) for consent to the return of surplus. Mr. Justice Carter adjourned the matter on October 21, 1992 until the consent of the Commission was received.

A pre-hearing conference held at the offices of the Commission resulted in an order dated the 5th day of August, 1993, that this matter be resolved upon the basis of written submissions on the following two issues:

Issue No. 1 "Is the Notice provided at Tab 18 of the Application defective? If so, in light of all the circumstances, are the defects such that the Notice must be reserved and the application process redone?"
and

Issue No. 2 "Is the surplus reversion provision found in the 1964 Plan valid? It was agreed by the parties that if the provision in the 1964 Plan was valid, the Applicant had met the requirements of subsection 79(3)(b)."

ISSUE #1 "Is the Notice provided at Tab 18 of the Application defective?"

The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, and its Local 195 and the bargaining unit employees (the "Respondent") submits that the Notice which the Applicant served pursuant to subsection 78(2) of the Act was deficient as it failed to refer to two earlier pension documents. The Applicant submits that there is no real or substantive issue to be decided with respect to the form of the Notice as the firm representing the Respondent had represented the Respondent, the only legal bargaining agent of the members of the Plan, since at least February of 1990,

both in this matter and in the concurrent court application, and that that firm had copies of the two earlier pension documents prior to the delivery of the Notice, and accordingly there was no prejudice to the Respondent by the omission of the two earlier pension documents in the Notice.

In view of the circumstances and as no evidence of prejudice to the Respondent was adduced, the Commission holds that it is not necessary that notice be reserved.

ISSUE #2 “Is the surplus reversion provision found in the 1964 Plan valid?”

The 1960 and 1962 Plans did not require, nor did the documents make any provision whatsoever, for funding. The sole requirement of those plans was that the company would “pay” the amounts as required; that is, there was no obligation to fund on an ongoing basis. This type of document created what is colloquially referred to as a “pay as you go” plan.

At the time these earlier pension documents were created, pension legislation did not require registration, or funding, of pension plans.

It is well settled law that where there is no property, there is no trust. D.W.M. Waters in his seminal text *The Law of Trusts in Canada* provides the following definition of a trust.

“Among common lawyers the following definition is generally regarded as being one of the best: “All that can be said of a trust, therefore, is that it is the relationship which arises whenever a person called the trustee is compelled in Equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one, and who are termed *cestuis que trust*) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.” [Keaton, G.W., *The Law of Trusts*, 9th ed. (1968), p.5]. Another familiar definition, approved by Romer L.J. in *Green v. Russell*, [[1959] 2 All E.R. 525 (C.A.)], by Cohen J. in *Re Marshall’s Will Trusts*, [[1945] 1 All E.R. 550], and in Canada by Disbery J. in *Tobin Tractor (1957) Ltd. v. Western Surety Co.*, [(1963), 42 W.W.R. 532], is to be found in *Underhill’s Law of Trusts and Trustees* [12th ed. (1970), p.3].

A trust is an equitable obligation binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or *cestuis que trust*), of whom he may himself be one, and anyone of whom may enforce the obligation.” (p.5)

Accordingly, no trust arose until there were funds paid pursuant to the Plan.

The funding of the Plan first occurred with the registration of a Plan effective December 31, 1964. Section 11 of the Plan clearly provided for reversion of surplus to the Company:

“The balance of net assets, if any, remaining after all liability for benefits under the Plan with respect to the employees shall be returned to the Company”.

Accordingly, the first “trust” document clearly provided for reversion of surplus to the employer and therefore met the requirements of section 79(3)(b) of the Act. Further, as there was no trust prior to this time, there was no prohibition from enacting the 1964 Plan. Moreover, from and after the 1964 Plan, the Plan was agreed to by the various collective agreements.

Conclusion

The Commission consents to the withdrawal of surplus in favour of the Applicant.
Dated this 14th day of February, 1994 at the City of Toronto, Province of Ontario.

M. Joseph Regan, Chair
Kathryn Bush
Donald Collins
Joyce Stephenson
Monica Townson

Contacts For PCO Enquiries

Actuarial Services	Anna Montenegro	314-0559
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Communications - including Publications and BBS	Judith Chalmers	314-0699
Issues and Correspondence - including Freedom of Information Requests and Media Enquiries	Margaret Dougherty	314-0697
General Enquiries		314-0660
Mailing List Update and Requests for Publications	Linda Stangl	314-0694
Policy Issues (Bilingual)	Susan Ellis Jules Huot	314-0703 314-0613
Pension Benefits Guarantee Fund		
Assessment	George Ha	314-0676
Registrar/Secretary to the Commission	Mary Crocker	314-0624

Contacts For Plan-related Enquiries

1. Sector Allocations - (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining, Construction, Finance...	Rosemine Jiwa-Jutha	314-0611	Larry Falconer	314-0610
Trade, Commercial, Public Administration	Larry Falconer	314-0610	Rosemine Jiwa-Jutha	314-0611
Food, Beverages, Textiles, Paper...	Jaan Pringi	314-0586	Larry Martello	314-0587
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Jaan Pringi	314-0586
Printing, Primary Metals, Machinery...	Mark Henry	314-0584	David Kearney	314-0590
Electrical, Non-Metallic, Chemicals...	David Kearney	314-0590	Mark Henry	314-0584

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans - (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A -BRI	David Allan	314-0612	Elizabeth Carter	314-0604
BRO -COM	Steve Young	314-0646	Larry Murray	314-0644
CON -EZZ	Alain Malaket	314-0609	John Graham	314-0647
F -HAZ	Larry Murray	314-0644	Steve Young	314-0646
HEA -KMZ	William Qualtrough	314-0641	Sandy Malloy	314-0636
KNA -MOQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR -PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL -SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI -TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR *	John Graham	314-0647	Alain Malaket	314-0609

*Companies with alpha-numeric names.

3. Alpha Allocations - Defined Contributions Plans

Alpha Range	Pension Analyst		Alternate	
A -Canada	Doug Kaye	314-0605	Debra Bain	314-0607
Canadian-COK	Margaret Fennell	314-0600	Claude De Souza	314-0608
COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM -FLO	Debra Bain	314-0607	Doug Kaye	314-0605
FLU -HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM -JAL	Merle Corbie	314-0637	Lynn Barron	314-0639
JAM -MIL	Wynnell DeLandro	314-0603	John Staric	314-0596
MIN -ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU -RAL	Lynn Barron	314-0639	Merle Corbie	314-0637
RAM -SHA	John Staric	314-0596	Wynnell DeLandro	314-0603
SHE -THA	Merle Corbie	314-0637	Lynn Barron	314-0639
THE -VUL	Lynn Barron	314-0639	Merle Corbie	314-0637
VUM *	John Staric	314-0596	Wynnell DeLandro	314-0603

4. Alpha Allocations - Pension Plans of Insolvent Companies

Alpha Range	Coordinator		
A -E	Jai Persaud		314-0595
F -P	Robin Gray		314-0593
Q *	Lawrence Contant		314-0602

*Companies with alpha-numeric names

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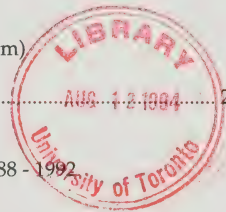
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The PCO Bulletin is published by the Pension Commission of Ontario, which is located at 250 Yonge Street, (just south of Dundas Street), 29th Floor, Toronto, Ontario M5B 2N7 (416) 314-0660 fax (416) 314-0650

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

On June 27, the Honourable Floyd Laughren, Minister of Finance announced changes to pension rules. The Minister's news release and supporting documentation were uploaded to the PCO Conference #149 on the BBS on Tuesday, June 28.

Because of their importance, this issue of the PCO Bulletin leads off with the news release and fact sheets followed by an explanation of the content of the amendments and, the bilingual text of the two amendments to Regulation 909.

For Immediate Release

June 27, 1994

Finance Minister Announces Changes to Pension Rules

Toronto -- Changes to Ontario's pension rules will help avoid needless hardship for workers who transfer their pensions to locked-in RRSPs, Finance Minister Floyd Laughren announced today.

The changes also include an extension to conditions for withdrawing surplus funds from wound-up pension plans.

"Ontario workers deserve to know they can retire in financial security," Mr. Laughren said. "In April, I announced we would change pension rules to make them fairer for workers who transfer their pension money to locked-in RRSPs. Today we are delivering on that commitment."

Today's announcement, effective June 24, 1994, included three changes to provincial regulations:

Payments from locked-in RRSPs

The amendments to **Pension Benefits Act** regulations allow anyone who has pension money in a locked-in RRSP to begin receiving retirement payments at the earliest time allowed by the pension plan from which the funds came. If there is money in the locked-in RRSP from more than one pension plan, payments may begin at the earliest time allowed by any of the plans.

Previously, people who transferred their pension funds to locked-in RRSPs could not begin receiving payments until age 55, even if the pension plan the money came from would have allowed early retirement payments to begin sooner.

Locking-in of pension money

The amendments also change rules regarding how much pension money can be locked in when it is transferred to an RRSP. This change responds to a limit imposed by Revenue Canada, under the federal **Income Tax Act**, on how much pension money could be transferred to a locked-in RRSP without becoming taxable. Any funds in excess of the Revenue Canada limit are taxable, while the rest remains tax-sheltered.

People affected by Revenue Canada's limit have to pay income tax on the excess, even though under Ontario rules this money was locked-in and not accessible.

Under the new rules, the excess will not be locked-in. It will be transferred to a regular (non-locked-in) RRSP.

Holders can withdraw it if they wish, and pay the appropriate income tax; or, if they have room to make an RRSP contribution for that year, can keep it in the regular RRSP and let it grow. The amount up to the limit imposed by Revenue Canada will continue to be locked-in, to preserve it for retirement.

Surplus withdrawal

The Finance Minister also announced he is extending the current conditions for withdrawing surplus money from wound-up pension plans until December 31, 1997. The conditions, first put in place in 1991, require that plan sponsors and members negotiate the division of the surplus money, and that at least two-thirds of the plan beneficiaries must agree.

"Experience has shown these conditions are an effective compromise," Mr. Laughren added.

"Previously, parties resorted to costly court action to settle their differences. Extending the current rules for three years maintains a workable arrangement."

Access to Early Retirement Benefits - Fact Sheet

On Friday, June 24, 1994, the Ontario Government changed the regulations under the *Pension Benefits Act* (the "PBA") to allow payments from locked-in RRSPs and Life Income Funds (LIFs) to begin before age 55 in some circumstances.

This change removes a restriction in the previous rules which prevented former plan members from receiving payments from RRSPs/LIFs until age 55. This change is consistent with rules on when people may begin to receive payments from pension plans and deferred annuities.

Previous Situation

When a person leaves a job or is laid off, they may transfer the pension they have built up to another retirement savings arrangement. Under the old rules, if they transferred their pension to a locked-in RRSP or LIF, they had to wait until age 55 to receive retirement benefits, even if their pension plan would have allowed them to receive payments earlier.

Former plan members who left their pension with their former employer, transferred it to the plan of a new employer, or used the money in their pension plan to purchase a deferred annuity, did not face the same restriction.

After Change

Under the new rules, anyone who has a locked-in RRSP or LIF may begin to receive payments at the earliest date they would have received payments directly from the pension plan. For example, if the pension plan allowed early retirement payments to begin at age 50, payments from the locked-in RRSP or LIF are allowed to begin at age 50.

In addition, if a person has money in their locked-in RRSP or LIF originating from more than one pension plan, payments may begin at the earliest date allowed by any of the plans.

There are approximately 400 pension plans in Ontario which allow early retirement payments to begin before age 55. Under the new rules, members of these plans

who have transferred their pensions to a locked-in RRSP or LIF no longer have to wait until they turn 55 to begin receiving their benefits.

Portability of Pension Benefits - Fact Sheet

On Friday, June 24, the Ontario Government changed the regulations under the *Pension Benefits Act* (the "PBA") regarding the locking-in of pension benefits in certain situations when a member of a pension plan transfers their pension money to a RRSP. This change permits a portion of these funds to be "unlocked" in certain circumstances so that it is accessible to the person holding the RRSP.

Previous Situation

Members of a pension plan who leave their employment or whose pension plan is terminated may choose to transfer their pension money to an RRSP. The PBA "locked-in" the RRSP so that the money could not be accessed, preserving it for retirement.

Until recently, all of the money transferred to an RRSP was fully tax-sheltered under the federal *Income Tax Act*. A worker could transfer the full amount of the money without having to pay any income tax. Effective January 1, 1992, Revenue Canada limited the amount of the transferred money that is tax-sheltered. Income tax would have to be paid on the amount over the limit. However, because of the Ontario PBA's locking-in rules, individuals did not have access to this money.

Current Situation

As a result of the changes to the PBA regulations, the full amount of the pension money may be transferred to an individual's RRSP. However, the RRSP will have two parts:

- 1) The amount of money up to the *Income Tax Act* limit will be in a Locked-In Retirement Account (LIRA). The amount in the LIRA will be locked in until retirement and will be fully tax-sheltered.
- 2) The portion that exceeds the limit will be in a regular (non locked-in) RRSP. Income tax will have to be paid on the amount in the regular RRSP, but it will be accessible. The individual will be able to cash it in, or if they have room for an RRSP contribution for that tax year, they may leave it in the RRSP so that it can grow.

This change will also apply if an individual transfers their pension money from the pension fund to a life income fund (LIF). The amount up to the *Income Tax Act* limit may be transferred to a LIF, and the amount that exceeds the limit may be transferred to a Registered Retirement Income Fund (RRIF) and cashed.

This change will assist pension plan members who have large pension fund savings as a result of a generous plan or the member's long service. It removes a significant conflict of laws between Ontario's PBA and the federal *Income Tax Act*.

Surplus Withdrawals from Wound-up Pension Plans - Fact Sheet

On Friday, June 24, 1994, the Ontario Government extended *Pension Benefit Act* (the "PBA") regulations, originally put in place in December 1991, which provide conditions under which employers may access surplus from wound-up pension plans. The extension will be in place until December 31, 1997.

Surplus occurs in pension plans when assets exceed liabilities. (An "asset" is the value of investments plus the interest they earn and a "liability" is the money required to meet pension plan obligations).

Under the regulations, employers may withdraw surpluses from pension plans only where the employer obtains the written agreement of the bargaining agent. If there is no bargaining agent, at least two-thirds of plan members must agree to the withdrawal. If the Pension Commission considers it appropriate in the circumstances, it may also require the employer to get the agreement of all plan beneficiaries.

Prior to 1991, the requirements of the PBA made the entitlement and distribution of surplus on wind-up very difficult. Employers and employees often resorted to costly and time-consuming legal action to resolve these questions.

These conditions encourage the parties to negotiate to resolve disputes over surplus ownership. The three year extension continues a workable arrangement.

Explanatory Notes on the Content of the Amendments to the Regulation

The new regulations deal with four areas that needed to be addressed in the regulations to the Pension Benefits Act (the "PBA") for a variety of reasons. O. Reg. 409/94 resolves a conflict which arises, under certain circumstances, between Ontario's pension law and the requirements of the *Income Tax Act* (Canada). Greater certainty with respect to certain surplus matters is also introduced in that regulation.

I Conflicts with the Income Tax Act (Canada)

The amendments replace what was known previously and informally as locked-in RRSPs with the term locked-in retirement accounts ("LIRA"). The new term is designed to distinguish between regular (unlocked) RRSPs and RRSPs which are locked-in under pension law now referred to as LIRAs. Its purpose is to draw a distinction between prescribed tax-deferred savings arrangements which are required to be administered in accordance with the PBA and the Regulation (LIRAs and LIFs) and those which are not locked-in (RRSPs and RRIFs).

The ITA (Canada) imposes maximum limits on the amount of pension monies which can be transferred from a defined benefit plan to a tax-assisted retirement savings arrangement or a defined contribution provision under the same plan on a tax-deferred basis. This can occur in the following circumstances: when a plan member terminates employment, the plan winds up, or the plan converts from defined benefit to defined contribution. The PBA prescribes the method to be used to determine the minimum amount which can be transferred.

When the benefits of some pension plan members are commuted, the commuted values may exceed the ITA (Canada) limit. If the member elects to transfer the commuted value on termination of employment or, must transfer the commuted value out on plan wind up, the member may face adverse tax consequences. The amendments provide that upon termination of employment, plan wind up or conversion, where the amount which can be transferred under the PBA exceeds the maximum amount which may be transferred under the ITA on a tax-deferred basis, the excess may be transferred to a regular (unlocked) RRSP or a Registered Retirement Income Fund (RRIF). It is important to understand that the payment of an excess amount from a pension plan in the form of a

lump sum cash payment directly to an individual is not permitted.

(Please note that if the locked-in portion of the funds is transferred to a LIRA, the unlocked portion must be transferred to an RRSP. If the locked-in portion is transferred to a LIF, the unlocked portion must be transferred to a RRIF.)

This regulation permits the unlocking, only on the transfer out of a pension plan, of pension funds that exceed ITA (Canada) maximum amounts for tax-deferral, so the funds can be accessed to pay the tax on them. For example, if a member has unused RRSP deduction room, the member may choose to leave money in the RRSP or withdraw it. If the member does not have unused RRSP deduction room, the member will want to withdraw money to pay tax and avoid the imposition of the federal penalty tax on excess RRSP contributions.

Funds transferred out of a pension plan prior to June 24, 1994 that were in excess of ITA tax-deferred maximums are not affected by this new regulation. Only funds transferred out of a pension plan on and after June 24, 1994 that are in excess of ITA tax-deferred maximums are affected by this change to the regulation.

Any enquiries concerning income tax consequences or RRSP concerns should be directed to Revenue Canada for response.

II Rights to Early Retirement

This regulation permits retirement income from funds transferred out of a pension plan to commence on the earliest date that the individual could have started receiving pension income under the terms of the pension plan or under the Act (grow-in provisions).

Plan members may transfer their pension funds out of a pension plan at retirement, death or termination of plan membership on a locked-in basis, and may begin receiving retirement income generated from those funds no earlier than age 55. Where the pension plan from which the funds were transferred allowed pension income to begin payment earlier than age 55, that right is lost. Although the former age 55 restriction is consistent with most pension plans, members of pension plans which allow pension payments to begin prior to age 55 have sometimes transferred their

pension funds out of the plan without realizing that in doing so they would lose the right to start receiving pension payments at the earlier date.

The new regulation allows an individual to receive retirement payments which commence at the earliest date on which the former member is entitled to receive payments under the terms of any former employer's pension plan from which money was transferred into the locked-in retirement account.

III Surplus Withdrawals on Wind Up

The amendment extends the current provisions for surplus withdrawals from wound up pension plans where payment of surplus is being made to the employer.

Previous provisions which require negotiation of surplus distribution where the employer has entitlement on wind up by requiring member consent expire on December 31, 1994. The new regulation will continue current surplus withdrawal requirements for three more years -until December 31, 1997.

The amendment also extends the deadline for clarification of surplus entitlement in plans texts. Employers currently have until December 31, 1994 to amend their plans to clarify entitlement to surplus on both an on-going and wind up basis. If they do not, plans will be deemed to prohibit withdrawal of surplus while on-going, and on wind up will require surplus to be paid to members and former members. Originally, this deadline was December 31, 1986 and the most recent extension was made in 1990. This amendment to the Regulation extends the deadline for three more years until December 31, 1997.

IV Housekeeping Corrections and Clarifications

The regulation will correct errors and reduce uncertainty in relation to the following housekeeping corrections and clarifications:

- clarifies that "regulation date" in Regulation 909 is November 26, 1992;
- corrects errors in references to section numbers in section 47.1 of the Regulation;
- corrects a translation error in the French version of Form 3 to the Regulation;
- corrects subsection reference in s. 24(3.1).

Regulations

On June 24, 1994, O. Reg. 408/94 was filed amending Regulation 909/90. The authoritative bilingual version is found in the July 9, 1994 issue of the Ontario Gazette.

On June 24, 1994, O. Reg. 409/94 was filed amending Regulation 909/90. The authoritative bilingual version is found in the July 9, 1994 issue of the Ontario Gazette.

REGULATION TO AMEND REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

REGULATION TO AMEND REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

Note: Since January 1, 1994, Regulation 909 has been amended by Ontario Regulation 142/94. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1993.

Note: Since January 1, 1994, Regulation 909 has been amended by Ontario Regulation 142/94. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1993.

1. (1) Subsection 47(9) of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by striking out "the 31st day of December, 1994" at the end and substituting "December 31, 1997".
2. (2) Subsection 47(10) of the Regulation is amended by striking out "the 31st day of December, 1994" at the end and substituting "December 31, 1997".

1. The definition of "Regulation date" in subsection 1(2) of **Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:**

"Regulation date" means November 26, 1992.

2. Subsection 8(3) of the Regulation is amended by **striking out "the 31st day of December 1994" at the end and substituting "December 31, 1997".**

3. **(1) Subsection 21(1) of the Regulation is revoked and the following substituted:**

(1) This section governs the transfer of an amount equal to the commuted value of a deferred pension under clause 42(1)(b) of the Act into a prescribed retirement savings arrangement.

(1.1) The following are the prescribed retirement savings arrangements:

1. A life income fund.
2. A locked-in retirement account.
3. An RRIF.
4. An RRSP.

- (1.2) If the amount to be transferred does not exceed the amount prescribed for such a transfer under the *Income Tax Act* (Canada), it may be transferred only into a life income fund or a locked-in retirement account.

RÈGLEMENT MODIFIANT LE RÈGLEMENT 909 DES RÈGLEMENTS REFONDUS DE L'ONTARIO DE 1990 PRIS EN APPLICATION DE LA LOI SUR LES RÉGIMES DE RETRAITE

Remarque: Depuis le 1er janvier 1994, le Règlement 909 a été modifié par le Règlement de l'Ontario 142/94. Pour les modifications antérieures, voir la Table des règlements qui figure dans les Lois de l'Ontario de 1993.

1. (1) Le paragraphe 47 (9) du Règlement 909 des Règlements refondus de l'Ontario de 1990 est modifié par substitution, à «31 décembre 1994» à la fin, de «31 décembre 1997».
2. (2) Le paragraphe 47 (10) du Règlement est modifié par substitution, à «31 décembre 1994» à la fin, de «31 décembre 1997».

(1.3) If the amount to be transferred is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada),

(a) that portion that does not exceed the prescribed amount may be transferred only into a life income fund or a locked-in retirement account; and

(b) that portion that exceeds the prescribed amount may be transferred only as described in subsection (1.4) or (1.5).

(1.4) If the amount transferred under clause (1.3)(a) is transferred into a life income fund, the amount transferred under clause (1.3)(b) may be transferred only into an RRIF.

(1.5) If the amount transferred under clause (1.3)(a) is transferred into a locked-in retirement account, the amount transferred under clause (1.3)(b) may be transferred only into an RRSP.

(2) Subsection 21(2) of the Regulation, excluding the clauses, is revoked and the following substituted:

(2) A contract to establish a locked-in retirement account shall provide that,

.....

(3) Subclause 21(2)(a)(ii) of the Regulation is amended by striking out “registered retirement savings plan that meets the requirements of this section” in the second and third lines and substituting “locked-in retirement account”.

(4) Subclause 21(2)(a)(iii) of the Regulation is revoked and the following substituted:

(iii) to purchase an immediate or deferred life annuity described in subsection (2.1) that is provided by a person authorized under the laws of Canada or a province to sell annuities as defined in section 248 of the *Income Tax Act* (Canada) under an insurance contract that meets the requirements of section 22,

(5) Section 21 of the Regulation is amended by adding the following subsection:

(2.1) The annuity must not begin before the earlier of,

(a) the earliest date on which the former member is entitled to receive pension benefits under the Act as a result of termination of employment or termination of membership in any pension plan from which money was transferred into the locked-in retirement account; or

(b) the earliest date on which the former member is entitled to receive pension benefits under any pension plan described in clause (a) as a result of termination of employment or termination of membership in the plan.

(6) Subsection 21(5) of the Regulation is revoked and the following substituted:

(5) In this section,

“life income fund” means an RRIF that meets the requirements set out in Schedule 1; (“fonds de revenu viager”)

“locked-in retirement account” means an RRSP that meets the requirements set out in subsection (2); (“compte de retraite avec immobilisation des fonds”)

“RRIF” means an registered retirement income fund established in accordance with the *Income Tax Act* (Canada). (“FERR”)

“RRSP” means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada). (“REÉR”)

4. The Regulation is amended by adding the following section:

21.1 (1) This section applies if an amendment to a pension plan with defined benefits converts them to defined contribution benefits.

(2) A member with defined benefits who elects to convert them in accordance with the amendment to the pension plan is entitled to require the administrator to transfer the amount described in subsection (4) to a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada).

(3) The administrator shall make the transfer in accordance with the instructions of the member but only if the transfer complies with the Act and this Regulation.

(4) The amount that may be transferred is that portion of the amount of the commuted value of the member's defined benefits that exceeds the amount prescribed under the *Income Tax Act* (Canada) for a transfer of benefits from a defined benefit provision of a pension plan to a money purchase provision of the same plan.

(5) A transfer made in accordance with this section is prescribed for the purposes of clause 63(5)(c) of the Act.

5. Subsection 24 (3.1) of the Regulation is amended by striking out "subsection (2)" in the first line and substituting "subsection (3)".

6. (1) Paragraphs 3, 4, 5, and 6 of section 47.1 of the Regulation are revoked and the following substituted:

3. Paragraphs 2, 3, 4, and 5 of subsection 4(4) of this Regulation.
4. Section 30 of this Regulation.
5. Section 37 of this Regulation.
6. Section 76 of this Regulation, with respect to the plan fiscal years that ended on the 31st day of March in 1989 and 1990.

(2) Paragraphs 3, 4, 5, and 6 of Section 47.2 of the Regulations are revoked and the following substituted:

3. Paragraphs 2, 3, 4 and 5 of subsection 4(4) of this Regulation.
4. Section 30 of this Regulation.
5. Section 37 of this Regulation.
6. Section 76 of this Regulation, with respect to the plan fiscal years that ended on the 31st day of March in 1989 and 1990.

(3) This section shall be deemed to have come into force on the day on which Ontario Regulation 760/91 came into force (Dec. 20, 1991).

7. Clause 4(1)(a) of Schedule 1 to the Regulation is revoked and the following substituted:

(a) no earlier than the earlier of,

- (i) the earliest date on which the former member is entitled to receive pension benefits under the Act as a result of termination of employment or termination of membership in any pension plan from which money was transferred into the life income fund, or
- (ii) the earliest date on which the former member is entitled to receive pension benefits under any pension plan described in subclause (i) as a result of termination of employment or termination of membership in the plan;

8. The French version of Form 3 to the Regulation is amended by striking out "qui ne me procurera ni pension de survivant ni pension" in the eighth and ninth lines and substituting "qui ne me procurera pas de pension de survivant ou me procurera une pension".

* * *

RÈGLEMENT MODIFIANT LE RÈGLEMENT 909
DES RÈGLEMENTS REFONDUS
DE L'ONTARIO DE 1990
PRIS EN APPLICATION DE LA LOI SUR
LES RÉGIMES DE RETRAITE

Remarque: Depuis le 1er janvier 1994, le Règlement 909 a été modifié par le Règlement de l'Ontario 142/94. Pour les modifications antérieures, voir la Table des règlements qui figure dans les Lois de l'Ontario de 1993.

1. La définition de «date du Règlement» au paragraphe 1 (2) du Règlement 909 des Règlements refondus de l'Ontario de 1990 est abrogée et remplacée par ce qui suit :

«date du Règlement» Le 26 novembre 1992.

2. Le paragraphe 8 (3) du Règlement est modifié par substitution, à «31 décembre 1994» à la fin, de «31 décembre 1997».

3. (1) Le paragraphe 21 (1) du Règlement est abrogé et remplacé par ce qui suit :

(1) Le présent article régit le transfert, visé à l'alinéa 42 (1) b) de la Loi, d'un montant égal à la valeur de rachat d'une pension différée dans un arrangement d'épargne-retraite prescrit.

(1.1) Les arrangements d'épargne-retraite prescrits sont les suivants:

1. Les fonds de revenu viager.
2. Les comptes de retraite avec immobilisation des fonds.
3. Les FERR.
4. Les REÉR.

(1.2) Si le montant à transférer n'est pas supérieur au montant prescrit dans le cas d'un tel transfert aux termes de la *Loi de l'impôt sur le revenu* (Canada), il ne peut être transféré que dans un fonds de revenu viager ou dans un compte de retraite avec immobilisation des fonds.

(1.3) Si le montant à transférer est supérieur au montant prescrit dans le cas d'un tel transfert aux termes de la *Loi de l'impôt sur le revenu* (Canada) :

- a) la partie qui n'est pas supérieure au montant prescrit ne peut être transférée que dans un fonds de revenu viager ou dans un compte de retraite avec immobilisation des fonds;
- b) la partie qui est supérieure au montant prescrit ne peut être transférée que de la manière prévue au paragraphe (1.4) ou (1.5).

(1.4) Si le montant transféré en vertu de l'alinéa (1.3) a) l'est dans un fonds de revenu viager, le montant transféré en vertu de l'alinéa (1.3) b) ne peut être transféré que dans un FERR.

(1.5) Si le montant transféré en vertu de l'alinéa (1.3) a) l'est dans un compte de retraite avec immobilisation des fonds, le montant transféré en vertu de l'alinéa (1.3) b) ne peut être transféré que dans un REÉR.

(2) Le paragraphe 21 (2) du Règlement, à l'exception des alinéas, est abrogé et remplacé par ce qui suit:

(2) Le contrat qui constitue un compte de retraite avec immobilisation des fonds stipule ce qui suit:

(3) Le sous-alinéa 21(2) a) (ii) du Règlement est modifié par substitution à «régime enregistré d'épargne-retraite qui satisfait aux exigences du présent article» aux deuxième et troisième lignes, de «compte de retraite avec immobilisation des fonds».

(4) Le sous-alinéa 21(2) a) (iii) du Règlement est abrogé et remplacé par ce qui suit :

(iii) pour constituer une rente viagère immédiate ou différée visée au paragraphe (2.1) qui est offerte par une personne autorisée en vertu des lois du Canada ou d'une province à offrir des rentes, au sens de l'article 248 de la *Loi de l'impôt sur le revenu* (Canada), aux termes d'un contrat d'assurance qui satisfait aux exigences de l'article 22.

(5) L'article 21 du Règlement est modifié par adjonction du paragraphe suivant :

(2.1) La rente ne doit pas commencer à une date antérieure à celle des dates suivantes qui survient en premier :

- a) la première date à laquelle l'ancien participant a le droit de recevoir des prestations de retraite aux termes de la Loi par suite de la cessation de son emploi ou de celle de son affiliation à un régime duquel des sommes ont été transférées dans le compte de retraite avec immobilisation des fonds;
- b) la première date à laquelle l'ancien participant a le droit de recevoir des prestations de retraite aux termes d'un régime visé à l'alinéa a) par suite de la cessation de son emploi ou de celle de son affiliation au régime.

(6) Le paragraphe 21 (5) du Règlement est abrogé et remplacé par ce qui suit :

(5) Les définitions qui suivent s'appliquent au présent article.

«compte de retraite avec immobilisation des fonds» REÉR qui satisfait aux exigences énoncées au paragraphe (2). («locked-in retirement account»)

«FERR» Fonds enregistré de revenu de retraite constitué conformément à la *Loi de l'impôt sur le revenu* (Canada). («RRIF»)

«fonds de revenu viager» FERR qui satisfait aux exigences énoncées à l'annexe 1. («life income fund»)

«REÉR» Régime enregistré d'épargne-retraite constitué conformément à la *Loi de l'impôt sur le revenu* (Canada). («RRSP»)

4. Le Règlement est modifié par adjonction de l'article suivant :

21.1 (1) Le présent article s'applique si la modification d'un régime à prestations déterminées convertit celles-ci en prestations à cotisation déterminée.

(2) Le participant qui a droit à des prestations déterminées et qui choisit de les convertir conformément à la modification du régime a le droit d'exiger de l'administrateur qu'il transfère le montant visé au paragraphe (4) dans un régime enregistré d'épargne-retraite constitué conformément à la *Loi de l'impôt sur le revenu* (Canada).

(3) L'administrateur effectue le transfert conformément aux instructions du participant, mais seulement si le transfert est conforme à la Loi et au présent règlement.

(4) Le montant qui peut être transféré correspond à la partie de la valeur de rachat des prestations déterminées du participant qui est supérieure au montant prescrit aux termes de la *Loi de l'impôt sur le revenu* (Canada) dans le cas d'un transfert de prestations d'une disposition à prestations déterminées d'un régime à une disposition à cotisations déterminées du même régime.

(5) Un transfert effectué conformément au présent article est prescrit pour l'application de l'alinéa 63 (5) c) de la Loi.

5. Le paragraphe 24 (3.1) du Règlement est modifié par substitution, à «paragraphe (2)» à la première ligne, de «paragraphe (3)».

6. (1) Les dispositions 3, 4, 5 et 6 de l'article 47.1 du Règlement sont abrogées et remplacées par ce qui suit:

3. Les dispositions 2, 3, 4 et 5 du paragraphe 4 (4) du présent règlement.
4. L'article 30 du présent règlement.

5. L'article 37 du présent règlement.

6. L'article 76 du présent règlement, relativement aux exercices du régime qui se sont terminés les 31 mars 1989 et 1990.

(2) Les dispositions 3, 4, 5 et 6 de l'article 47.2 du Règlement sont abrogées et remplacées par ce qui suit :

3. Les dispositions 2, 3, 4 et 5 du paragraphe 4 (4) du présent règlement.
4. L'article 30 du présent règlement.
5. L'article 37 du présent règlement.

6. L'article 76 du présent règlement, relativement aux exercices du régime qui se sont terminés les 31 mars 1989 et 1990.

(3) Le présent article est réputé être entré en vigueur le jour de l'entrée en vigueur du Règlement de l'Ontario 760/91 (le 20 décembre 1991).

7. L'alinéa 4 (1) a) de l'annexe 1 du Règlement est abrogé et remplacé par ce qui suit :

- a) au plus tôt à celle des dates suivantes qui survient en premier :
 - (i) la première date à laquelle l'ancien participant a le droit de recevoir des prestations de retraite aux termes de la Loi par suite de la cessation de son emploi ou de celle de son affiliation à un régime duquel des sommes ont été transférées dans le fonds de revenu viager,
 - (ii) la première date à laquelle l'ancien participant a le droit de recevoir des prestations de retraite aux termes d'un régime visé au sous-alinéa (i) par suite de la cessation de son emploi ou de celle de son affiliation au régime;

8. La version française de la formule 3 du Règlement est modifiée par substitution, à «qui ne me procurera ni pension de survivant ni pension» aux huitième et neuvième lignes, de «qui ne me procurera pas de pension de survivant ou me procurera une pension».

On March 10, 1994, O. Reg. 142/94 was filed amending Regulation 909/90. This made the Regulation officially bilingual. Since O. Reg. 142/94 is the French version of Regulation 909, it is not reproduced here owing to length. The authoritative version of O. Reg. 142/94 is found in the March 26, 1994 issue of the Ontario Gazette.

We have, however, reproduced the French version of all PCO prescribed forms (except the pre-printed Annual Information Return, Form 2) including:

- Form 1 Application for Registration of a Pension Plan
- Form 1.1 Application for Registration of a Pension Plan Amendment
- Form 3 Spousal Waiver of Joint and Survivor Pension
- Form 4 Spousal Waiver of Pre-retirement Death Benefit

Although not a prescribed form, the French version of Investment Policy Return (which is required with the first filing of the Statement of Investment Policies and Goals) is also included.

Pension practitioners are invited to copy or duplicate the French forms found here in the interest of facilitating administrative responsibilities and compliance with the Act and Regulation.

Readers of the *PCO Bulletin* should be aware that henceforth, all amendments to the Regulation will be reproduced in this publication in the official bilingual form.



Commission des
régimes de retraite
de l'Ontario

250, rue Yonge
29^e étage
Toronto, (Ontario) M5B 2N7

Formule 1 - Loi sur les régimes de retraite
Règlement 909

(Retourner l'original accompagné des droits -
Conserver le brouillon)

DEMANDE D'ENREGISTREMENT D'UN RÉGIME DE RETRAITE

(Écrire en caractères d'imprimerie)

RENSEIGNEMENTS CONCERNANT L'ADMINISTRATEUR

1. Nom de l'administrateur: _____

(Remarque: Si l'administrateur est une personne morale, un conseil ou un comité de retraite,
donner le nom de la personne morale, du conseil ou du comité.)

2. Adresse et code postal de l'administrateur: _____

3. Numéro de téléphone de l'administrateur: (_____) _____

4. Indiquer si l'administrateur du régime est: (cocher à l'endroit approprié)

☐ un ou des employeurs désignés
à la disposition 7;

☐ un conseil de fiduciaires;

☐ un comité de retraite;

☐ un conseil, une commission ou un organisme auquel
une loi de la Législature confie l'administration du
régime de retraite.

☐ une compagnie d'assurance;

5. Si l'administrateur est un comité de retraite, un conseil, une commission ou un organisme, annexer à la présente
formule le nom, l'adresse et le code postal de chaque membre.

6. Si l'administrateur est un comité de retraite, indiquer le nombre de membres qui sont des représentants:

(a) de l'employeur ou des employeurs ou de l'autre personne qui est tenue de cotiser au régime de
retraite pour leur compte; _____

(b) des participants au régime de retraite; _____

(c) TOTAL _____

Réservé à l'usage de la CRO	
C	_____ /00/
RA	_____ /00/
<input type="checkbox"/> Form signed	
<input type="checkbox"/> No plan documents received	
<input type="checkbox"/> Additional fee needed:	
	\$ _____
<input type="checkbox"/> Refund issued:	
	\$ _____
Verified by: _____	

RENSEIGNEMENTS CONCERNANT L'EMPLOYEUR

7. Nom de l'employeur: _____

8. Adresse et code postal de l'employeur: _____

9. Numéro de téléphone de l'employeur: (_____) _____
10. Y a-t-il d'autres employeurs, y compris des filiales ou des sociétés membres du même groupe, dont des employés participent au régime? _____ oui _____ non
- Si oui, annexer à la présente formule le nom, l'adresse et le code postal de chacun des autres employeurs.*
11. L'employeur ou les employeurs sont-ils: (cocher à l'endroit le plus approprié)
- (a) _____ une entreprise à propriétaire unique;
 - (b) _____ une société en nom collectif;
 - (c) _____ une association enregistrée;
 - (d) _____ une personne morale;
 - (e) _____ un gouvernement ou un organisme municipal;
 - (f) _____ un gouvernement ou un organisme provincial;
 - (g) _____ un gouvernement ou un organisme fédéral;
 - (h) _____ autre (préciser) _____

12. Quelle est l'activité principale de l'employeur? _____

13. Quelle est la nature de l'entreprise de l'employeur ou des employeurs? (cocher à l'endroit approprié - ✓)

- (a) emploi inclus _____
- (b) emploi autre qu'un emploi inclus _____

Remarque: Un emploi inclus est un emploi rattaché à la mise en service d'un ouvrage, d'une entreprise ou d'une activité de compétence fédérale.

- transport aérien, naval, ou par chemin de fer, camionnage interprovincial
- télégraphe, radio et télédiffusion
- fourrage, minoterie, graineterie, silos
- activité dans le Territoire du Yukon ou les Territoires du Nord-Ouest
- banque
- l'énergie atomique

RENSEIGNEMENTS CONCERNANT LE RÉGIME DE RETRAITE

14. Quel est le nom du régime de retraite? _____
15. Quelle est la date de prise d'effet du régime? _____
(jour, mois, année)
16. Quelle est la date de fin d'exercice du régime? _____
(jour, mois)
17. Une convention collective crée-t-elle le régime de retraite ou en justifie-t-elle l'existence?
_____ oui _____ non *Si oui, annexer une copie de la convention collective à la présente formule.*

18. Existe-t-il d'autres régimes de retraite déjà établis par l'employeur ou les employeurs désignés à la disposition 7 ou par une filiale ou une société membre du même groupe?

_____ oui _____ non

Si oui, annexer à la présente formule une liste précisant:

- (a) le nom du ou des régimes;
- (b) le nom de l'employeur ou des employeurs pour chaque régime s'il y a des différences avec ceux qui sont désignés à la disposition 7;
- (c) le numéro de certificat d'enregistrement de chaque régime;
- (d) le nom du gouvernement auprès duquel chaque régime est enregistré;
- (e) le nombre de participants ontariens à chaque régime.

19. Les participants couverts par le nouveau régime ont-ils participé dans le passé à un autre régime de retraite de la compagnie, y compris une compagnie que celle-ci remplace, une filiale ou une société membre du même groupe?

_____ oui _____ non

Si oui, donner le nom du ou des régimes antérieurs et leur numéro d'enregistrement provincial, et préciser leur situation actuelle:

RENSEIGNEMENTS CONCERNANT LE FINANCEMENT

20. Les prestations fournies par le régime sont-elles garanties ou assurées entièrement par une compagnie d'assurance?

_____ oui _____ non

Si oui, indiquer le nom, l'adresse et le code postal de la compagnie d'assurance:

Si non, une caisse de retraite doit être établie. Indiquer le nom de la caisse ainsi que le nom, l'adresse et le code postal du dépositaire de son actif:

Nom de la caisse: _____

Nom du dépositaire: _____

Adresse postale: _____

21. Indiquer le nom, l'adresse et le code postal du conseiller en placement, le cas échéant:
-
22. Indiquer le nom, l'adresse et le code postal du bureau de conseillers en actuariat, le cas échéant:
-

PARTICIPANTS AU RÉGIME ET DROITS D'ENREGISTREMENT

23. Inscrire ci-dessous le nombre de participants, sans compter les anciens participants, et le lieu de leur emploi à la date de prise d'effet du régime:

Lieu d'emploi	Hommes	Femmes	Total
Ontario			
Terre-Neuve			
Ile-du-Prince-Édouard			
Nouvelle-Écosse			
Nouveau-Brunswick			
Québec			
Manitoba			
Saskatchewan			
Alberta			
Colombie-Britannique			
Territoire du Yukon			
Territoires du Nord-Ouest			
Hors du Canada			
TOTAL			*

(*Remarque: Ce total doit être égal au nombre total de participants à la date de prise d'effet du régime.)

24. Remplir l'annexe fournie par le surintendant afin de calculer les droits d'enregistrement requis, et indiquer le montant payable:

_____ \$

DOCUMENTS À ANNEXER

25. La présente demande d'enregistrement doit être accompagnée des documents suivants:
- (a) des copies certifiées conformes des documents qui créent le régime de retraite et en justifient l'existence;
 - (b) des copies certifiées conformes des documents qui créent la caisse de retraite et en justifient l'existence;
 - (c) une copie certifiée conforme des accords réciproques de transfert qui se rapportent au régime de retraite;
 - (d) une copie certifiée conforme des explications et des autres renseignements qui doivent être fournis aux participants et aux personnes admissibles au régime de retraite aux termes du paragraphe 25(1) de la Loi (Renseignements fournis par l'administrateur).
26. Indiquer ci-dessous si les documents et renseignements suivants sont annexés ou s'ils sont sans objet (S/O):
- _____ Copie certifiée conforme du texte du régime et des modifications, le cas échéant.
 - _____ Copie certifiée conforme de la convention collective, si le régime a été établi conformément à une convention collective de travail.
 - _____ Copie certifiée conforme du ou des contrats de fiducie.
 - _____ Copie certifiée conforme du ou des contrats de dépôt auprès d'une compagnie d'assurance.
 - _____ Copie certifiée conforme du ou des contrats de rente collective.
 - _____ Copie certifiée conforme de la déclaration explicative fournie aux participants et aux personnes admissibles au régime (paragraphe 25(1) de la Loi).
 - _____ Copie certifiée conforme de la déclaration des politiques et des objectifs de placement.
 - _____ Liste des nom et adresse de chaque membre du comité de retraite, du conseil, de l'organisme ou de la commission, demandée à la disposition 5.
 - _____ Liste des autres régimes de retraite déjà établis par l'employeur, demandée à la disposition 18.
 - _____ Liste des nom et adresse de chaque employeur participant au régime, demandée à la disposition 10.
 - _____ Liste des noms et des numéros de certificat d'enregistrement de tous les régimes de retraite antérieurs de l'employeur ou des employeurs, demandée à la disposition 19.
 - _____ Autre (*préciser*) _____
 - _____ Droits devant accompagner la demande, calculés conformément à l'annexe fournie par le surintendant et payables à l'ordre du *ministre des Finances*.

DÉCLARATION DE L'ADMINISTRATEUR

Je soussigné _____, demande par les présentes l'enregistrement du régime de retraite décrit dans la présente formule aux termes de la Loi et des règlements. Je fais cette demande en ma qualité d'administrateur/de signataire dûment autorisé de l'administrateur (*rayez le terme qui ne s'applique pas*) de

_____ (le «régime de retraite»
(*nom du régime de retraite*)

Sont annexés des copies certifiées conformes des documents qui créent le régime de retraite et la caisse de retraite et en justifient l'existence ainsi que les autres documents qui doivent être déposés aux termes de la Loi.

JE DÉCLARE CE QUI SUIT:

1. Les documents déposés en même temps que la présente formule comprennent des copies certifiées conformes des documents qui créent le régime de retraite et la caisse de retraite et en justifient l'existence, et ces documents ainsi que tous les autres documents déposés en même temps que la présente demande sont conformes à la Loi et aux règlements.
2. Je comprends que la responsabilité de faire en sorte que les documents déposés en même temps que la présente formule soient conformes à la Loi et aux règlements incombe à l'administrateur. J'ai rempli cette obligation et je me suis conformé aux dispositions de la Loi et des règlements dans la présentation de la présente demande d'enregistrement.
3. Je reconnais que la présente déclaration s'étend à l'observation des lois sur les régimes de retraite de toute autorité législative désignée à l'intérieur du Canada, autre que l'Ontario, dans les cas où ces lois s'appliquent aux participants et anciens participants au régime de retraite.

Je déclare connaître les obligations que m'impose la Loi en ma qualité d'administrateur du régime de retraite et que les affirmations ci-dessus sont exactes, au mieux de ma connaissance et de ce que je tiens pour véridique.

FAIT À _____, le _____, 19_____.

Témoin

Signature de l'administrateur
ou du signataire autorisé

Nom du témoin

Nom de l'administrateur
ou du signataire autorisé
(*en caractères d'imprimerie*)

Adresse du témoin



Commission des
régimes de retraite
de l'Ontario

250, rue Yonge
29^e étage
Toronto, (Ontario) M5B 2N7

Formule 1.1 - Loi sur les régimes de retraite
Règlement 909

DEMANDE D'ENREGISTREMENT D'UNE MODIFICATION APPORTÉE À UN RÉGIME DE RETRAITE

(Écrire en caractères d'imprimerie)

Numéro d'enregistrement attribué par la Commission des régimes de retraite de l'Ontario (◀Commission▶):

Nom du régime de retraite:

Nom de l'employeur ou du promoteur:

Date de prise d'effet de la modification:

(jour, mois, année)

Numéro de la modification *(s'il y a lieu)*:

Préciser ce sur quoi porte la demande:

_____ Transfert d'éléments d'actif

_____ Fusion de régimes

_____ Remboursement de cotisations

_____ Programme de retraite anticipée/
de réduction des effectifs

_____ Répartition de l'excédent

_____ Conversion du régime

_____ Liquidation totale ou partielle
du régime

_____ Autre

DÉCLARATION DE L'ADMINISTRATEUR

Je soussigné _____, demande par les présentes l'enregistrement, aux termes de la Loi et des règlements, de la modification apportée au régime de retraite qui est décrite dans la présente formule. Je fais cette demande en ma qualité d'administrateur/de signataire dûment autorisé de l'administrateur (*rayez le terme qui ne s'applique pas*) de

_____ (le «régime de retraite»)
(Nom du régime de retraite)

dont le numéro d'enregistrement attribué par la Commission est _____.

Sont annexés une copie certifiée conforme du document modificatif ainsi que les autres documents qui doivent être déposés aux termes de la Loi.

JE DÉCLARE CE QUI SUIT:

1. Les documents déposés en même temps que la présente formule comprennent une copie certifiée conforme du document modificatif, et ce document ainsi que tous les autres documents déposés en même temps que la présente demande sont conformes à la Loi et aux règlements.
2. Je comprends que la responsabilité de faire en sorte que les documents déposés en même temps que la présente formule soient conformes à la Loi et aux règlements incombe à l'administrateur. J'ai rempli cette obligation et je me suis conformé aux dispositions de la Loi et des règlements dans la présentation de la présente demande d'enregistrement.
3. Je reconnais que la présente déclaration s'étend à l'observation des lois sur les régimes de retraite de toute autorité législative désignée à l'intérieur du Canada, autre que l'Ontario, dans les cas où ces lois s'appliquent aux participants et anciens participants au régime de retraite.

Je déclare connaître les obligations que m'impose la Loi en ma qualité d'administrateur du régime de retraite et que les affirmations ci-dessus sont exactes, au mieux de ma connaissance et de ce que je tiens pour véridique.

FAIT À _____, le _____, 19_____.

Témoin

Signature de l'administrateur
ou du signataire autorisé

Nom du témoin

Nom de l'administrateur
ou du signataire autorisé
(en caractères d'imprimerie)

Adresse du témoin



RENONCIATION DU CONJOINT À UNE PRESTATION DE PENSION RÉVERSIBLE

Nom du conjoint

du participant/

de l'ancien participant

Je soussigné _____ ,
suis le conjoint, au sens de la *Loi sur les régimes de retraite*, de

Nom du participant/

de l'ancien participant

_____ qui a droit à une prestation de retraite dans le cadre du

Nom du régime

_____.

Je sais qu'en l'absence de renonciation, une pension payable à un ancien participant qui a un conjoint à la date où le premier versement est exigible doit être payée sous forme de pension réversible conformément à l'article 44 de la *Loi sur les régimes de retraite*.

Je comprends que je peux renoncer à tout droit à une pension de survivant d'au moins 60 pour cent de la prestation de retraite de mon conjoint au cas où il décéderait avant moi. Le fait que je renonce à mon droit permettra à mon conjoint de choisir une autre forme de pension qui ne me procurera aucune pension de survivant ou me procurera une pension inférieure au minimum de 60 pour cent.

Je renonce par les présentes à mon droit à une pension réversible prévu à l'article 44 de la *Loi sur les régimes de retraite*. La signature de mon conjoint, ci-dessous, constitue une reconnaissance du fait qu'il accepte ma renonciation.

Je comprends que nous pouvons révoquer la présente renonciation en tout temps avant le commencement du paiement de la pension de mon conjoint.

Cité ou ville,
province

Fait à _____ , dans la province de _____

Jour, mois, année

le _____ , 19 _____ .

Signature du conjoint

Témoin à la signature
du conjoint

Signature du participant/
de l'ancien participant

Témoin à la
signature du participant/
de l'ancien participant

Avant de remplir la présente formule, chaque partie devrait envisager d'obtenir des conseils juridiques indépendants sur ses droits et l'effet de la renonciation.

Remarque: La présente renonciation n'est valide que si elle est remise à l'administrateur ou à la compagnie d'assurance, selon le cas, dans la période de douze mois qui précède immédiatement le commencement du paiement de la prestation de retraite, conformément au paragraphe 46(2) de la *Loi sur les régimes de retraite*.



RENONCIATION DU CONJOINT À UNE PRESTATION DE DÉCÈS ANTÉRIEURE À LA RETRAITE

Nom du participant ou
de l'ancien participant

ci-après appelé le «participant» ou l'«ancien participant», et

Nom du conjoint

ci-après appelé le «conjoint», certifions par les présentes que nous sommes des conjoints au sens de la *Loi sur les régimes de retraite*.

Nous comprenons qu'en l'absence de renonciation, si le participant ou l'ancien participant décède:

- (a) soit avant le paiement d'une pension différée;
- (b) soit, lorsqu'il garde son emploi après la date normale de retraite, avant le commencement du paiement des prestations de retraite,

la personne qui est son conjoint à la date de son décès a le droit de recevoir une prestation de décès antérieure à la retraite, sous forme de somme globale ou de rente viagère immédiate ou différée provenant du

Nom du régime
de retraite

à la date de décès du participant ou de l'ancien participant.

Nous comprenons également que nous pouvons renoncer au droit du conjoint de recevoir une prestation de décès antérieure à la retraite, auquel cas le paiement de cette prestation sera fait:

- (a) soit à un bénéficiaire désigné par le participant ou l'ancien participant;
- (b) soit au représentant successoral du participant ou de l'ancien participant à des fins de distribution comme partie de sa succession.

Nom du conjoint Nous renonçons par les présentes au droit de _____
de recevoir un paiement aux termes de l'article 48 de la *Loi sur les régimes de retraite*.

Cité ou ville,
province

Fait à _____ dans la province de _____

Jour, mois, année

le _____, 19_____.

Signature du conjoint

Témoin à la signature
du conjoint

Signature du participant/
de l'ancien participant

Témoin à la signature du participant/
de l'ancien participant

Avant de remplir la présente formule, chaque partie devrait envisager d'obtenir des conseils juridiques indépendants sur ses droits et l'effet de la renonciation.



Commission des
régimes de retraite
de l'Ontario

250, rue Yonge
29e étage
Toronto, (Ontario) M5B 2N7

Loi sur les régimes de retraite de 1990
Règlement 909

DÉCLARATION DE POLITIQUE DE PLACEMENT

*(À présenter avec la déclaration des
politiques et des objectifs de placement)*

Directives:

1. Cette déclaration doit être présentée pour l'enregistrement de chaque régime de retraite en vertu de la ***Loi sur les régimes de retraite de 1990***. Elle est accompagnée d'une déclaration des politiques et des objectifs de placement, sauf pour les régimes exemptés en vertu de la directive 2.
2. Pour les régimes placés dans un contrat entièrement assuré ou dans un contrat de fonds d'administration générale de dépôts, régis par la ***Loi sur les assurances*** ou la ***Loi sur les compagnies d'assurance canadiennes et britanniques (Canada)***, remplir les parties A et B. Conformément à l'article 80 des Règlements de la ***Loi sur les régimes de retraite de 1990***, ces régimes de retraite sont dispensés de la production d'une déclaration des politiques et des objectifs de placement.
3. Pour tous les autres régimes de retraite, remplir les parties A et C.

PARTIE A

Numéro d'enregistrement de la Commission des régimes de retraite de l'Ontario

Nom de l'employeur/répondant

Nom du régime de retraite

PARTIE B

Je certifie que: a) je suis l'administrateur dûment nommé du régime de retraite ci-dessus;
b) ce régime est placé dans un contrat entièrement assuré ou dans un contrat de fonds d'administration générale de dépôts régis par la ***Loi sur les assurances*** ou la ***Loi sur les compagnies d'assurance canadiennes et britanniques (Canada)***.

Nom (en caractères d'imprimerie)

Signature

Date

PARTIE C

Toutes les exigences de la loi énumérées dans cette partie doivent être reflétées dans la déclaration des politiques et des objectifs de placement et cochées sur cette déclaration. Les régimes de retraite entièrement placés dans les "fonds en commun" doivent cocher les lignes appropriées, et inscrire S/O dans celles qui correspondent aux postes sans objet. Cette déclaration et la déclaration des politiques et des objectifs de placement doivent être présentées à la Commission des régimes de retraite de l'Ontario.

Exigences de la loiCocher (✓)Réservé à la Commission des régimes de retraite

- | | |
|--|-------|
| 1. Type de régime (Règl. 67(3)) | _____ |
| 2. Nature des obligations (Règl. 67(3)) | _____ |
| 3. Taux de rendement prévu et politique relative à la composition de l'actif (Règl. 67(3)(b)) | _____ |
| 4. Diversification du portefeuille (Règl. 67(3)(a)) | _____ |
| 5. Catégories et sous-catégories de placements et de prêts (Règl. 67(3)(c)) | _____ |
| 6. Méthode d'évaluation des placements sur lesquels des opérations ne sont pas effectuées régulièrement (Règl. 67(3)(h)) | _____ |
| 7. Politique à suivre en situation de conflit d'intérêts (Règl. 67(3)(d)) | _____ |
| 8. Divulgence des conflits d'intérêts (Règl. 67(3)(e)) | _____ |
| 9. Prêt d'argent ou de valeurs mobilières (Règl. 67(3)(f)) | _____ |
| 10. Conservation ou délégation des droits de vote (Règl. 67(3)(g)) | _____ |

Je certifie que:

- (a) je suis l'Administrateur dûment nommé de ce régime
 (b) la déclaration des politiques et des objectifs de placement a été adoptée le

 (jour, mois, année)

- (c) au mieux de ma connaissance et de ce que je tiens pour véridique, la déclaration des politiques et des objectifs de placement présentée avec cette déclaration de politique de placement répond aux exigences de la **Loi sur les régimes de retraite de 1990** et de ses règlements d'application.

 Nom (en caractères d'imprimerie)

 Signature

 (jour, mois, année)

Announcements

New Chair of the Pension Commission Appointed

On March 24, 1994, the Minister of Finance announced the appointment of Eileen E. Gillese as Chair of the Pension Commission of Ontario for a three year term. Before her appointment as Chair, Professor Gillese served as Vice Chair of the Pension Commission from May 25, 1989. Her original appointment as a Commissioner was on January 1, 1988.



Eileen E. Gillese is the Associate Dean, Administration and a Professor of Law at the Faculty of Law, the University of Western Ontario. Her areas of academic specialization include pension law, administrative law and trusts. In addition to teaching, Professor Gillese has practised law on a full-time basis, both in Alberta and Ontario. Her academic background includes a Bachelors degree in Commerce and Business Administration from the University of Alberta in 1977, and undergraduate and graduate degrees from Oxford University in England in 1979 and 1980 respectively.

Professor Gillese is a member of the editorial board of the *Estates and Trusts Journal* and *Dominion Law Reports*. She has published widely in the areas of pension and trust law and is author of *Property Law*, 2nd edition, and coauthor of *Commentary and Cases on Trusts*, 4th edition.

In the April 19 announcement on the BBS, we reported incorrectly that the term of the appointments of the Chair and Vice Chair was for one year. The terms for the Chair and Vice Chair are for three years.

New Vice Chair Appointed to the Commission

Also on March 24, 1994 the Minister of Finance announced the appointment of Monica Townson as Vice Chair of the Pension Commission for a three year term.

Ms. Townson is an independent economic consultant and social policy analyst focussing mainly on issues relating to women and seniors. She is a graduate of the London School of Economics and has conducted studies for various task forces, royal commissions, federal, provincial and territorial governments, community organizations and trade unions. She has been a consultant to the United Nations Economic Commission for Europe on the economic role of women and has participated in international seminars as an expert on both pensions and parental leave. Her recent publications include a fact book on *The Economic Situation of Canada's Seniors*, published by the National Advisory Council on Aging. As a newspaper columnist, Ms. Townson writes on personal finance and retirement planning. Ms. Townson chaired the Ontario Fair Tax Commission which, in December 1993, reported to the Minister of Finance with recommendations on tax reform for the province of Ontario.



Ms. Townson was originally appointed to the Commission on May 1, 1986 for a three year term. Her appointment was renewed in 1989 and in 1992.

Kit Moore Appointed Commissioner



Kit Moore was appointed on June 8, 1994 to the Pension Commission of Ontario for a three year term. Mr. Moore recently retired from a national actuarial consulting firm where he was a vice-president and senior consulting actuary working with clients on matters related to pensions and group life and health programs. Mr. Moore is widely experienced in actuarial valuations, plan design, administration and management of fund assets. Prior to working in the consulting field, Mr. Moore worked for twenty years with a major Canadian insurance company from the outset of his career.

Mr. Moore studied at the University of Toronto graduating with an Honours B.A. degree in mathematics, majoring in actuarial science. He is a Fellow of the Society of Actuaries and a Fellow of the Canadian Institute of Actuaries (CIA). In 1984-85 he was president of the CIA and from 1987 to 1990 he served on the Board of Governors of the Society of Actuaries. Mr. Moore has made a significant contribution to the development of improved professional standards for North American actuaries and in increasing public awareness of those standards.

David R. Brown Steps Down from the Commission on August 31, 1994



Following many years of distinguished service as a Commissioner of the Pension Commission, Mr. Brown's term expires on August 31, 1994. Mr. Brown first served on the Commission from 1977 to 1983. After a five year hiatus, Mr. Brown was appointed on September 1, 1988 and has served continuously from that date.

Mr. Brown was born and educated in Winnipeg graduating in 1956 from the University of Manitoba with a Bachelor of Commerce degree. In 1960 he qualified as a Fellow of the Society of Actuaries and joined a firm of consulting actuaries in Toronto where he has worked throughout his career with major corporate and public sector clientele nationally.

For some time, Mr. Brown has been a managing partner of the firm.

Several achievements should be noted at this time. Mr. Brown was actively involved in the establishment of the Pension Benefits Guarantee Fund in 1980, and participated in early consultations with CAPSA members which led to a 1982 "consensus" document on pension reform. Most recently, he was a key participant in the redrafting of the solvency rules which are now contained in Regulation 909. Mr. Brown has contributed with vigour to pension policy and regulatory matters and that effort has strengthened significantly the pension regulatory system in Ontario.

PCO Task Force to Conduct a Review of PBGF Assessments from 1988 through 1992

The PBGF was established in 1980 to protect pension benefit entitlements of the members of defined benefit pension plans who are employed in Ontario, and claims can be made in cases where the employer is insolvent and pension plan assets are insufficient to cover the plan liabilities. In 1987, the regulation was amended requiring that the PBGF assessment be determined on the funded status of the plan on a solvency basis.

The PCO will conduct a review to determine whether PBGF assessments were calculated in accordance with Regulation 708 under the *PBA, 1987* for the period between 1988 through 1992. In 1992 there was a solvency regulation change which has a retrospective effect for certain plan regarding required contributions. But except for qualifying plans, the regulation change did not affect the required PBGF assessments prior to 1993.

The task force will review the solvency liabilities used to determine the PBGF assessment in accordance with Regulation 708 for that time period. Where the plan's actuary is unable to demonstrate that the PBGF assessment was determined in accordance with the old regulation, the assessment must be redetermined and the employer will be required to make up any difference owed to the PBGF.

Deadlines for the Submission of Applications to the Commission

Applicants filing submissions for consideration at future Commission meetings should be aware that deadlines for submitting applications to staff have been established. The deadlines ensure that staff and Commission members have sufficient time to review applications prior to the meetings.

Although applications will be dealt with as quickly as possible by staff after receipt, it is not possible to ensure that applications will be considered by the Commission if they do not conform to the deadlines indicated below. Applicants should also be aware that delays will likely result if applications are not complete when reviewed by staff. (This timetable does not apply to certain applications, for instance, making an application to the Commission to have the Guarantee Fund declared to apply to a pension plan.)

Commission Meeting Dates

Submission Deadlines

1994

Thursday, November 17, 1994
Thursday, December 15, 1994

Wednesday, August 24, 1994
Wednesday, September 21, 1994

(The August 25, 1994 meeting has been cancelled)

1995

Thursday, January 26, 1995
Thursday, February 23, 1995
Thursday, March 30, 1995
Thursday, April 27, 1995
Thursday, May 25, 1995
Thursday, June 29, 1995
Thursday, July 27, 1995
Thursday, September 28, 1995
Thursday, October 26, 1995
Thursday, November 23, 1995
Thursday, December 14, 1995

Wednesday, October 26, 1994
Wednesday, November 23, 1994
Wednesday, December 28, 1994
Wednesday, January 25, 1995
Wednesday, February 22, 1995
Wednesday, March 29, 1995
Wednesday, April 26, 1995
Wednesday, June 28, 1995
Wednesday, July 26, 1995
Wednesday, August 23, 1995
Wednesday, September 13, 1995

(The August 31, 1995 meeting has been cancelled)

BBS News

In July, the PCO will upload all decisions of the Commission since 1988 as well as the content of this issue of the *PCO Bulletin*. Furthermore, as a courtesy to pension practitioners and members of the Canadian Association of Pension Supervisory Authorities or CAPSA, the PCO will upload lists of vendors of LIFs and LIRAs in jurisdictions that have provided the information by the upload date.

We will also make our public brochures available in English and French namely, *Understanding Your Pension Plan - A Guide for Members of Employer Sponsored Pension Plans* and *When Your Pension Plan Winds Up - What It Means to Members*. Although their distribution to members is encouraged wherever possible, subscribers are asked to obtain written permission to reprint in whole, or, to give credit to the PCO for use of parts of these brochures. A "permission to reprint" form is included at the end of the brochure text and should be directed to the Director of the Policy and Research Branch.

Owing to the level of interest in the PCO's Conference, and recent developments which have added value to the service, the *BBS Information Package* will be distributed in the next issue of the *PCO Bulletin* to be published in the fall.

PCO Forms and Publications to be Distributed from Oshawa on and after September 15, 1994

For details on this new arrangement and how you can obtain copies of PCO forms and publications, please refer to the article on page 74. BBS subscribers can retrieve from the PCO conference, the electronic versions of prescribed forms 1, 1.1., 3, 4, the Investment Policy Return (form) and other forms also described in the article.

PCO Telecommunications Service Interrupted on June 28

Voice-net Ontario advised PCO staff that telecommunications service was interrupted on or about June 28. The problem was defective voice-mail diskettes causing unheard recorded messages to be automatically deleted from the system and to be irretrievable. We sincerely regret any inconvenience this may have caused.

If you have reason to suspect that your unanswered voice-mail message was among those deleted, please call again!

Couriers to Deliver Completed AIRs to Oshawa - Not the PCO

The PCO pre-prints all Annual Information Returns and Schedules and mails these to Administrators for completion and filing by the applicable deadline. The return envelope included in this mailing is addressed to a Ministry of Finance postal box in Oshawa.

Some administrators, facing a deadline, have been delivering the completed AIR, schedules and cheques to the PCO at 250 Yonge Street which is incorrect.

Administrators delivering the completed AIR package must address the package to:

**Ministry of Finance
Taxation Data Centre
33 King Street West
Oshawa, ON L1H 8H5**

Couriers are to leave their packages with the security desk on the main floor.

Message of the Chair

Professor Eileen E. Gillese

Introduction

Since assuming the position of Chair of the Pension Commission of Ontario, I have frequently heard the following kind of question, “I understand what the **staff** of the Commission does, but what does the Commission itself do?” I will begin these remarks by addressing that question, as some understanding of the Commission’s role is necessary to appreciate the goals that the Commission will strive to meet during my term as Chair.

The Role of the Commission

The Commission is composed of nine members appointed by Order-in-Council. All members of the Commission, including the current Chair, serve on a part-time basis.

Section 96 of the *Pension Benefits Act* (“the Act”) sets out the duties of the Commission to administer the Act and regulations, promote the establishment of pension plans and advise and make recommendations to the Minister. In addition, throughout the Act, the Commission is given various specific responsibilities including deciding on the disposition of applications for refunds (s. 63) and surplus (ss. 78, 79), handling of administration and declarations under the Pension Benefits Guarantee Fund (ss. 82, 83) and appeals of decisions of the Superintendent pursuant to section 89.

A closer examination of these provisions in the legislation reveals that the Commission is meant to perform three types of functions: policy making, quasi-judicial decision making and leadership. The policy making function flows from the responsibility placed upon the Commission under section 96 to “administer this Act and regulations”. In order to “administer” the Act and regulations, the Commission believes that plan sponsors and administrators need to know what their obligations are under the Act and how those obligations can be fulfilled and, plan members, their representatives and plan beneficiaries need to know what their rights are under pension law and how those rights can be exercised. The establishment and communication of policies is seen to be an effective mechanism for assisting administrators in this regard.

The phrase “quasi-judicial decision making” is made up of two components: decision making and quasi-judicial. The decision making component refers to the various decisions that the Commission is called upon to make that affect individuals such as plan members, sponsors and the Superintendent. The quasi-judicial component refers to the requirements that the Act and the law places upon the processes followed by the Commission when making such decisions. The phrase, read as a whole, means that when making these kinds of decisions, the Commission is bound to do so in a way that is fair to all concerned but at the same time best serves the purposes of the legislation.

The obligation created under section 96 to “advise the Minister” and “to make recommendations to the Minister” is somewhat vague. In my view, it is to be read in the context of clause 96(b) which places on the Commission the duty to promote the establishment and improvement of pension plans throughout Ontario. When clauses 96(b), (c) and (d) are read together, it appears to call the Commission to exercise leadership in the area of pensions broadly. That is, it places some obligation on the Commission to bring to the attention of the Minister and the public the great need that exists for pensions. Without private pensions, the future of many Ontario residents is bleak indeed. The social, political and economic ramifications of having seniors in our province living below the poverty line are grim. Bringing this to the attention of the public generally is, however, only a first step. For the Commission to successfully meet the obligations placed on it by section 96, it must go further and suggest ways in which expanded coverage can be realized. That said, the Commission recognizes the constraints created by the Act in crafting new and innovative solutions to the challenge of expanding coverage.

The Past Six Years

Before turning to the matter of the goals of the Commission for the next two to three years, it may be helpful to briefly review what has transpired since the new Act was passed in 1987. The accomplishments on the staff side of the Commission in that time period can be grouped under the headings of accountability and communication.

The strides forward in the area of accountability include essentially eliminating the backlog; setting and meeting targets for the processing of documents, requests and applications; re-organizing the staff to make a single officer responsible for designated plans so that all players in the pension industry have a single human being to whom they can turn, at the Commission, for information; and, taking steps, through training and improved communication flows, to ensure that the information given out is reliable and consistent.

There have been highly visible improvements made by the staff in the area of communication. Calling to mind but a few items will demonstrate this: establishment of the *PCO Bulletin*, going on-line with the BBS, and, creating advisory boards comprised of industry representatives so that there is a clear communication link between all segments of the pension industry and the staff on the vital matter of policy formulation.

In a paper written about the Commission, it was remarked that prior to 1987, the Commission was “the tribunal that never was”. The remark was made because it was largely the new Act in 1987 which gave the Commission its role as a quasi-judicial decision maker. As a consequence, the Commission has divided its time over the past six years between its long-standing policy making role and learning to be a fair and impartial decision maker in areas as diverse as surplus applications under the new negotiated surplus sharing regulations, hearing appeals from Superintendent decisions and determining when partial wind up orders should issue. We have decided literally hundreds of matters in the past six years.

We have produced pre-hearing conference procedures to assist all those preparing for non section 89 hearings before the Commission and, through those procedures have, I believe, cut down the frustrations associated with appearing before the Commission.

Goals

The obvious question is: where does the Commission go from here? The three primary functions of the Commission were described above; it will come as no surprise that the goals the Commission has for the near future relate to the three functions.

In relation to policy making, the Commission intends to continue down the path it is on in that it will continue to set and communicate policies in writing which make compliance easier but which do not derogate from the dictates of the legislation. We will continue to obtain industry input through use of the advisory committees. To the extent possible, we will develop policy that is responsive to industry need and that minimizes unnecessary regulatory and administrative burdens.

One area that will have particular attention paid to it is the area of non-compliance. The Superintendent and his staff are putting in place the systems necessary to detect anyone who is in breach of the Act or regulations; investigations will be undertaken and appropriate steps taken. The Commission will have a role to play in developing the policies on how to treat offenders and, of course, it will hear appeals from actions of the Superintendent.

The quasi-judicial decision making function will be a particular focus for me. I am the first Chair to have legal training since the new Act was passed and I feel a special obligation to “demystify” the processes and procedures associated with the Commission decision making functions. I hope that by the end of my tenure as Chair, there will be standardized processes followed by the Commission in the exercise of each and every one of its

decision making functions. Moreover, I will strive to see that published procedures and information sheets are created and made available for the guidance of all those affected by Commission decisions. Finally, I intend to ensure that the processes and procedures adopted, while complying with the principles of natural justice, are the least cumbersome and most expeditious possible.

These goals alone will take up much of the energies of the Commission but I would be remiss if I did not publicly state that it is the goal of the Commission to begin the process of leadership. That is, we intend to take steps to refocus attention on the need for retirement planning writ large and to begin to ask the questions of how we can best enable Ontario residents to enjoy an adequate income in their retirement years.

Conclusion

I consider it a privilege to have been named Chair of the Pension Commission of Ontario and, particularly, at this time. The entire pension industry -- including the regulator! -- has been on a steep learning curve since the new Act was passed in 1987. Like any period of rapid change, this has meant that we all faced a great many challenges and frustrations. I believe that it is accurate to say that, at times, most of us felt overwhelmed by the work associated with the changes and all the new learning we had to do.

Thankfully, many of the frustrations have been, or are being dealt with, which frees us to pay attention to the challenges, the biggest of which is expansion and improvement of pension coverage. There is a need for enhanced retirement planning/pension coverage. There is an abundance of ability in all segments of the pension industry. There is evidence of a shared view that the industry and the regulators can make the Act work. The sum of need plus ability plus attitude makes me genuinely optimistic that, over the balance of my term, headway will be made in meeting that challenge.

Administrative Practices



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

SECTION:	Surplus
INDEX NO.:	S900-501
TITLE:	Surplus Distribution to an Employer - PBA, s. 78 and 79 and Reg. 909, s. 8
APPROVED BY:	The Commission
PUBLISHED BBS:	June 28, 1994
PUBLISHED BULLETIN:	Summer 1994 Bulletin 5/2 p. 32
EFFECTIVE DATE:	June 23, 1994
REVISED DATE:	

PART I

Distribution of Surplus to an Employer on Full Wind Up

PART II

Distribution of Surplus to an Employer on Partial Wind Up

Subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), provides that surplus may not be paid to an employer unless the Commission consents to the payment. The Commission shall not consent to an application to distribute surplus to an employer until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant's assertion that the requirements and conditions have been satisfied should be included in the Application to the Commission.

Part I of this Administrative Practice identifies the procedure for bringing an Application to the Commission pursuant to section 78 of the Act and subsections 8(1) and 8(2) of Regulation 909 (the "Regulation") on a full wind up.

Part II of this Administrative Practice identifies the modifications to Part I which apply to an Application made to the Commission pursuant to section 78 of the Act and subsections 8(1) and 8(2) of the Regulation on a partial wind up.

It is the responsibility of the applicant to satisfy the Commission that the Application meets the requirements of the Act, the Regulation and Commission policies, procedures and administrative practices respecting such applications. It is also the applicant's responsibility to consider whether plan specific circumstances warrant the inclusion of additional information or documentation supporting the Application.

While every effort has been made to make this practice as complete as possible, the Commission is not bound by this practice. Further, the Commission is not bound by information or advice given to the applicant by staff of the Commission or the Superintendent in regards to an Application.

Relevant Published Policies, Procedures and Administrative Practices

Applicants are advised that the following policies, procedures and administrative practices contain information relevant to an Application for the Commission’s consent to a payment of surplus to an employer on full or partial wind up. These are available on the Bulletin Board System (the BBS) and have appeared in the *PCO Bulletin*, a publication of the Pension Commission of Ontario. They are listed by subject, BBS index number and publication date:

- 1) Surplus Distribution to Beneficiaries as cash on wind up; S900-300; August, 1993
- 2) Surplus Attributable to Employer and Employee Contributions; S900-800; August, 1993
- 3) Allocation of Surplus Distributed to Members and Former Members on Wind Up; S900-900; Spring, 1994
- 4) Members and Former Members on Wind up - Applications before the Commission - decision-making process; S900-900; Spring, 1994
- 5) Pre-hearing Conference Procedures; P300-700; August, 1993
- 6) Role of the Presiding Officer at the Pre-hearing Conference; P300-705; Spring, 1994
- 7) Submission Deadlines for PCO Monthly Meetings; P300-800; Dec ‘93/Jan ‘94
- 8) PCO Compliance Assistance Guideline No. 4 - Revised December, 1990; W100-100; December, 1990

An applicant who is eligible to file an Application pursuant to subsection 8(2) of the Regulation (the “grandfathering” provision), should also refer to the following:

- 9) Court Applications - Surplus Entitlement in Wound Up Plans; S900-250; October, 1992
- 10) Procedures for Applications Pursuant to subsection 7a(2) O. Reg. 743/91 [grandfathering provision]; S900-550; October, 1992
- 11) Court and PCO Procedure for Applications under Regulation 7a(2)(c) O. Reg. 708/87; S900-600; November, 1991

This administrative practice replaces Distribution to an Employer on Wind up, PBA s. 78 and 79, O.Reg. 909 7a(l)(b) - (BBS No. S900-500)

The content of this Administrative Practice is set out as follows:

PART I Distribution of Surplus to an Employer on Full Wind Up

General Principles	page 3 of this practice
The Notice of Application	page 4 of this practice
Written Agreement	page 6 of this practice
The Application	page 7 of this practice
Filing the Application	page 8 of this practice

PART II Distribution of Surplus to an Employer on Partial Wind Up

Modifications Which Apply
to Partial Wind Ups page 9 of this practice

SCHEDULE 1

Application Format and
Explanatory Notes page 10 of this practice

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PART I

DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND UP

General Principles

1. Where payment of surplus to the employer is sought on a wind up, section 78 of the Act requires that no payment may be made without the Commission's prior consent. Before such consent may be given, the requirements of subsection 78(2) of the Act concerning notice and disclosure of plan provisions with respect to the payment of surplus on wind up must be met. In addition, the requirements of subsection 79(3) must be satisfied.
2. Generally, an employer winding up a pension plan will file an Application for the Commission's consent to payment of surplus to the employer:
 - (a) after the Superintendent of Pensions has approved payment of basic benefits out of the plan;
 - (b) if the plan documents permit surplus reversion to the employer on the wind up of the pension plan;
 - (c) after the employer has submitted a copy of the Notice of Application to the Superintendent;
 - (d) after the employer has transmitted the Notice of Application and, where applicable, has provided a copy of the proposed surplus distribution agreement to those persons who are entitled to receive it, and
 - (e) after the employer has obtained the written agreements as required by clause 8(1)(b) of the Regulation, or
 - (f) if pursuant to subsection 8(2) of the Regulation, the applicant has obtained or is seeking to obtain a court order with respect to surplus entitlement and distribution.
3. Compliance with the requirements of the Act, the Regulation and conditions identified in any Commission policy, procedure and administrative practice which affects the Application is the responsibility of the applicant.
4. Applicants are responsible for the accuracy and completeness of the information contained in the Application and any supporting documents.

The Notice of Application

Content

5. The Notice of Application required by subsection 78(2) of the Act must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions must be consistent with the conditions under BBS Index No. S900-800.
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that submission may be made in writing to the Commission within 30 days of receipt of the notice), the Notice must also state that:
 - (a) written submissions are to be directed to the attention of the Registrar; and
 - (b) information related to the date on which the Application will be considered by the Commission may be obtained from the plan administrator.
8. With respect to clause 28(5)(f) of the Regulation (i.e., contractual authority for surplus revision), there must be complete disclosure of all provisions of the plan and prior versions of the plan which may be relevant to any determination of surplus entitlement, including provisions contained in all current and previous plan texts and trust agreements, insurance contracts, employee booklets and notices, collective bargaining agreements and any other relevant documents.

The actual wording of plan provisions which may be relevant to surplus entitlement and the authority to make plan amendments must be cited in the Notice of Application.

Where the plan documents do not contain explicit provisions with respect to surplus entitlement, this fact must also be disclosed in the Notice of Application.

If an Application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under BBS Index No. S900-600.

9. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind up report), if the office or location where the members were employed is closed, the employer must make alternative arrangements close to the location(s) where business was conducted for members to review the wind up report filed with the Commission in support of the surplus request.
10. The Commission may require the Notice of Application to be re-issued if the Commission determines that the requirements of the Act and the Regulation have not been satisfied, conditions identified in any Commission policy, procedure and administrative practice affecting Applications have not been met, or there has not been complete disclosure of all relevant information including the proposed surplus distribution agreement.
11. Subsection 28(5.1) of the Regulation requires the employer to submit a copy of the Notice of Application to the Superintendent before it is transmitted.

The Notice of Application should be submitted to the Superintendent by sending one (1) copy to:

Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, ON M5B 2N7

Attention: Superintendent of Pensions

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12. With respect to paragraph 7 above and subparagraph 27(j) below, the Registrar will forward a copy of any written representations received by the Registrar to the applicant.

Transmitting the Notice of Application

13. The employer is required to transmit the Notice of Application to all parties listed in subsection 78(2) of the Act.
14. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the Act.
15. Where the plan wind up results from an event affecting the employment of the members, such as in the case of a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind up, including the surplus distribution. This applies even if a member terminates after the notice date but prior to the event actually occurring. Please also refer to "PCO Compliance Assistance Guideline No. 4, Revised Dec. 1990" (BBS Index No. W100-100, published in the December, 1990 *PCO Bulletin*).
16. For the purposes of subsection 78(2)(a) of the Act, the Commission considers the following persons to be "former members" of the pension plan:
- (a) Former vested plan members who terminated employment within six years before the effective date of wind up, and who commuted or transferred their pension benefit out of the plan.
 - (b) Former non-vested plan members who terminated employment within six years before the effective date of wind up.
 - (c) Former plan members who had their pension benefits transferred to another pension plan sponsored by the same employer or another employer within six years before the effective date of wind up.
 - (d) Any plan beneficiary for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit.

Accordingly, the Commission requires the employer to transmit the Notice of the Application to those persons by personal delivery or first class mail. The Commission does not require the employer to transmit a copy of the proposed surplus distribution agreement to those persons. The Superintendent may authorize delivery by public advertisement or otherwise in accordance with subsection 112(3) of the Act if satisfied that it is not reasonable to give individual notice to any or all of these groups or individuals.

When considering the Application, the Commission may determine that any person, as described in subparagraph 16(d) above, for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit shortly before the date of wind up may be entitled to receive the Notice of Application by personal delivery or first class mail. In this circumstance, the Commission may require the employer to provide a copy of the proposed surplus agreement to those persons by personal delivery or first class mail and to obtain their written agreement.

Public Advertisement

17. Where an applicant requests the Superintendent's authorization to deliver the Notice of Application by public advertisement, the information provided in the draft public advertisement submitted to the Superintendent with the request must clearly indicate the following:
- (a) to whom the notice is addressed (i.e., former members or beneficiaries of the wound up plan or any applicable predecessor plan(s)),

- (b) the reason that these persons are being contacted (i.e, wind up of the pension plan in a surplus position and the surplus application), and
- (c) where the details of the surplus application will be made available.

Written Agreement (Applications pursuant to clause 8(1)(b) of the Regulation)

Content

18. When considering the Application, the Commission must be satisfied that:
- (a) prior to agreeing in writing, the affected members, former members and other persons have received, in addition to the Notice of Application, a copy of the proposed surplus distribution agreement with respect to all persons who are to participate in the surplus allocation, and
 - (b) the required number of written agreements has been obtained by the applicant.
19. The written agreement must provide for:
- (a) the name of the individual;
 - (b) the signature of the individual;
 - (c) the name of a witness; and,
 - (d) the signature of the witness.

Transmitting the Written Agreement

20. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the Act. In accordance with subsection 112(1) of the Act, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted with the Notice of Application.

Written Agreements

21. In order to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant is required to obtain the written agreement of two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind up. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual Application.
22. The appropriate bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation, is the collective bargaining agent or agents that represent the members of the plan at the date the written agreement is signed.
23. A collective bargaining agent may enter into a written agreement on behalf of those plan members represented by the agent only. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.
24. If a pension plan is provided for both unionized and non-unionized members, the written agreement of the collective bargaining agent(s) as well as two-thirds of those members not represented by the bargaining agent(s) must be obtained.

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25. The written agreement of a collective bargaining agent that represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

The Application

26. The format and content of the Application should be consistent with Schedule 1 under this practice.

27. All material required by the Act and Regulation must be attached to the Application, including:

- (a) A list, by class, of the names of members, former members or other persons who are affected by the wind up.
- (b) Pursuant to subsection 28(6) of the Regulation, a certified copy of the notice referred to in subsection 28(5).
- (c) A statement that the employer has complied with subsection 78(2) of the Act.
- (d) A list, by class, of the names of members, former members or any other persons who received the Notice of Application, the last date Notice was transmitted and the form of delivery of the Notice.
- (e) Copies of all provisions from the plan documents, trust agreements, insurance contracts, employee booklets and notices, and any other documents respecting surplus entitlement (in chronological order and clearly labelled) which may be relevant.
- (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind up report as of the effective date of the wind up giving rise to the Application and the actuary's certification from the wind up report or any supplemental wind up report.

A supplement to a wind up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the Application.

- (g) Information required to be submitted to PCO staff in accordance with BBS Index No. S900-800.
- (h) The Superintendent's approval of the payment of basic benefits based on the wind up report and any supplementary report.
- (i) A copy of the most recent collective bargaining agreement if the pension plan is negotiated and the agreement has not been filed in accordance with subsection 12(3) of the Act.
- (j) Any written representations objecting to the Application received by the applicant directly or through the Registrar, as well as any response(s) of the Applicant.
- (k) Any submissions which may be relevant to the Application.

Where other materials or information which may be relevant are discovered after the Application has been filed, such materials or information must be filed as an addendum to the initial Application (note paragraphs 29 and 36 below).

- (l) Where the Application is pursuant to clause 8(1)(b) of the Regulation:
 - i) a copy of the proposed surplus distribution agreement;

- ii) a list, by class, of the names of members, former members or any other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;
 - iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement, and
 - iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement.
- (m) Where the Application is to be brought pursuant to subsection 8(2) of the Regulation, the applicant should refer to BBS Index No. S900-600. If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the Application.

Filing the Application

28. A complete Application should be filed with the Commission at least ninety (90) days prior to the date of the Commission meeting at which the applicant wishes to have the Application considered.

Submission of the Application, including attachments, on stock which does not exceed 8-1/2" x 11" is preferred. Photo-reduction of relevant materials which are on larger stock to the more manageable 8-1/2" x 11" size is suggested (subject to legibility).

29. The Application is filed with the Commission by sending 25 copies to:

The Registrar
Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, ON M5B 2N7

Twenty-five (25) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the Application should be filed with the Registrar.

30. The Registrar will give the applicant acknowledgment of receipt of the Application.
31. The applicant and anyone who made representation pursuant to subsection 78(3) of the Act will be advised of the date on which the Commission will consider the Application.
32. The Commission will not consider the Application unless the Superintendent has approved the payment of basic benefits on the basis of the wind up report.
33. If the administrator is a person other than the employer, the employer must forward a copy of the Application to the plan administrator.
34. For Applications pursuant to clause 8(1)(b) of the Regulation, copies of all the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Registrar. As well, copies of the signed written agreements must be provided to the Pension Officer who is responsible for the pension plan.

Review Process

35. PCO staff will review the Application. If staff believe that the application is incomplete (i.e., information or materials are missing) staff will advise the applicant.

36. If the Application is found to be incomplete, the ninety (90) day period for processing an Application will not run from the date of filing. In such cases, the ninety (90) day period will begin to run once a complete Application has been filed.
37. Where applicable, the applicant or anyone who made representation pursuant to subsection 78(3) of the Act will be advised of the revised date on which the Commission will consider the Application.
38. The Registrar will provide a copy of the submissions of the Superintendent and/or staff concerning the Application to the applicant approximately fourteen (14) days prior to the Commission meeting at which the Application is to be considered.

At the same time, the Registrar will provide a copy of the submissions of the Superintendent and/or staff to those persons who made representation pursuant to section 78(3) of the Act.

39. Applicants and other persons who receive a copy of the submissions of the Superintendent and/or staff must file a response with the Registrar at least nine (9) days prior to the Commission meeting at which the Application is to be heard.

Twenty-five (25) copies of the response and any supporting materials should be submitted to the Registrar.

Copies of any response must also be provided to the other parties at least nine (9) days prior to the Commission meeting.

Pre-hearings and Commission Decisions

40. Applicants should be aware of the decision-making process outlined in BBS Index No. P300-100. An Application may be set over for a pre-hearing conference as outlined in BBS Index No. P300-700.
41. After the Commission has made its decision, the Registrar will communicate the Commission's decision in accordance with subsection 79(5) of the Act.
42. Any party to a proceeding before the Commission under section 79 of the Act may appeal to Divisional Court from the Commission's decision pursuant to section 91 of the Act.

PART II

DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND UP

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of an Application under Part II of this Administrative Practice, any reference to "full wind up" or "wind up" under Part I of this paper should be read as "partial wind up".
2. Those persons listed in subsection 78(2) of the Act who are entitled to receive the Notice of Application and a copy of the proposed surplus distribution agreement by personal delivery or first class mail in accordance with subsection 112(1) of the Act are as follows;
 - (a) all persons who are directly affected by the partial wind up (i.e., are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up),
 - (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind up, and

- (c) each collective bargaining agent that represents members under the plan at the date of partial wind up.
3. All persons who are not directly affected by the partial wind up are entitled to receive only the Notice of Application by personal delivery or first class mail. However, subject to obtaining the Superintendent's authorization under subsection 112(3) of the Act, the employer may choose to provide Notice by public advertisement or otherwise.
4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent which represents the members under the plan at the date of partial wind up who are directly affected by the partial wind up.

The written agreement of a collective bargaining agent that is a collective bargaining agent at the date of partial wind up for those members who are not affected by the partial wind up is not required to be obtained.

5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no "collective bargaining agent" which represents the members who are directly affected by the partial wind up, written agreement must be obtained from at least two-thirds of the members who are directly affected by the partial wind up.
6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind up must be obtained. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual Application.

SCHEDULE 1

FORMAT AND CONTENT OF THE APPLICATION TO THE COMMISSION FOR CONSENT TO THE REFUND OF SURPLUS TO AN EMPLOYER

- Date:** *Enter the date of the application.*
- Employer:** *Provide the full legal name of the employer making the application.*
- Pension Plan:** *Provide the full legal name of the pension plan and the provincial registration number.*
- Prepared By:** *Provide the name and title of the corporate officer authorized to act on behalf of the employer in respect of the application. (Unless otherwise indicated in the application, all communication from the Commission will be directed to the person who files the application.)*

Nature of the Application:

Provide a full description of what is being asked of the Commission with reference to the specific section(s) of the Act and Regulations pursuant to which the application is being made. For example:

Application for the Pension Commission's consent pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c.P8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the company) in the amount of \$ (show the amount as of the effective date of wind up) as at (show the effective date of wind up) plus investment earnings thereon to the date of payment and (add reference to any other adjustment that will be made in the proposed refund to the employer such as expenses).

This application is made pursuant to a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind up in the form of indexed benefits.

Appropriate modifications will be required with respect to applications which are pursuant to subsection 8(2) of the Regulation where the applicant has applied or, will apply, to court for an order under clause 7a(2)(c) of Ontario Regulation 708/87 as that section read prior to December 18, 1991.

Actuary/Counsel:

This section should provide the name of these persons connected to the application, either as agents of the employer making the application, or those acting on behalf of the members, former members, etc. If there is no such individual, please indicate "None".

Actuary for the Applicant (and name of firm):

Counsel for the Applicant (and name of firm):

Counsel for the Members/former members/union/etc.:

Actuary for the Members/former members/union/etc.:

Collective Bargaining Agent:

Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.

Background:

Provide a brief summary of the background of the plan leading up to the application including;

- *the effective date of the plan,*
- *the classes of members covered by the plan,*
- *the basic benefit structure (e.g. "non-contributory", flat benefit plan"),*
- *a brief chronology of the plan and any predecessor plans including reference to plan mergers/splits or conversions that may have occurred,*
- *the relevant corporate history including the background to any changes in the name of the employer associated with the pension plan,*
- *the effective date and reasons for the wind up of the pension plan, and*
- *any information which will assist in understanding the application.*

Subsection 78(2) of the Act - Notice Requirements

In the following subsections, the applicant should satisfy the Commission that the notice requirements of the Act and Regulations have been satisfied.

(a) Subsections 28(5) and 28(5.1) of the Regulation:

Provide information indicating how the applicant has complied with:

- Subsection 28(5) and any related Pension Commission policies, procedures or administrative practices setting out the minimum contents to be included in the Notice of Application required to be issued under subsection 78(2) of the Act.
- Subsection 28(5.1) which requires that a copy of the Notice of Application be filed with the Superintendent prior to transmittal to the members, former members and other persons.

(b) Subsection 28(6) of the Regulation:

Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the application be accompanied by a certified copy of the Notice of Application, a statement that subsection 78(2) of the Act has been complied with, the date the last Notice of Application was distributed and details as to the classes of persons who received notice. Include reference to the Attachment or Tab at which the certified copy of the notice may be found.

Subsection 112(3) of the Act - Alternate Service:

If transmittal by public advertisement or otherwise, was used in lieu of individual notice, indicate the classes or groups for whom service by public advertisement was provided along with advice as to the dates and newspapers an advertisement ran or, if applicable the date other alternative forms of notice were given. Include reference to the Attachment or Tab at which copies of the newspaper advertisements and the Superintendent's authorization for service by public announcement may be found.

Subsection 79(3) of the Act - Conditions Precedent:

In the following sections, the applicant should satisfy the Commission that the conditions of the legislation that have been met.

(a) Clause 79(3)(a) - The Plan has a Surplus:

Provide advice as to the date of the Superintendent's letter approving the distribution of the members' and former members' basic benefits. Include reference to the Attachment or Tab at which extracts of the wind up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the application a brief summary of the balance sheet for the plan as at the effective date of wind up along with an updated balance sheet if there has been any significant change in the figures. For example:

Balance Sheet	As at effective date of wind up	As of (current date)
Market value of assets	\$.00	\$.00
Liabilities		
Basic benefit entitlements	\$.00	\$.00
Liabilities for enhancements	\$.00	\$.00
Expenses	<u>\$.00</u>	<u>\$.00</u>
Surplus	\$.00	\$.00
Surplus sharing agreement:		
To employees	\$.00 (%)	
To employers	\$.00 (%)	

(b) Clause 79(3)(b) of the Act - The Plan Provides for the Payment of Surplus to the Employer on the Wind Up of the Pension Plan:

Provide an outline of the history of the plan provisions relating to the disbursement of surplus on wind up and, where any of the provisions have been amended since inception, the authority under the plan to amend. The outline must include reference to the plan documents, trust agreements, insurance contracts, employee booklets, collective bargaining agreements and any other relevant documents since the inception of the pension plan any prior pension plan. In addition, the outline should include reference to any documents that did not contain an express provision relating to surplus on wind up, or that were not supportive of the current application by the employer.

Reference should be included as to the Attachment(s) or Tab(s) at which clearly labelled copies of all relevant extracts from the plan documents, trust agreements, insurance contracts, employee booklets and notices, and any other documents or submissions respecting surplus entitlement may be found.

It is the responsibility of the applicant to satisfy the Commission that the conditions of the legislation for the Commission's consent to the application have been satisfied. Therefore, there should be some explanation or elaboration concerning why the applicant believes that the plan provides for payment of surplus to the employer.

(c) Clause 79(3)(c) of the Act - Provision has been made for the Payment of All Liabilities of the Pension Plan:

Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If all distributions to the members and other persons have not been completed, the Commission's consent to the payment to the employer normally will not be effective until all entitlements of the members, former members and other persons have been paid, purchased, or otherwise provided to the satisfaction of the Commission.

Clause 8(1)(b) of the Regulation - Written Agreement

Provide a summary of the notices issued and signed agreements provided. For example:

Number	Total Issued	Notices	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____

In addition:

- (a) notice was provided to (x) other persons who were members of the plan within the six years prior to the effective date of the wind up but who were not entitled to benefits payable under the plan

at the plan as of the effective date of wind up because their benefits were previously transferred out of the plan or they had no vested benefits when they terminated, and

- (b) notice was provided to (x) other persons for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit.

Subsection 8(2) of the Regulation - The Court Order

(a) Clause 8(2)(a) of the Regulation - The Status of the Application to Court:

Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located.

The applicant (enter "has applied" or "will apply") to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (enter "and has obtained" or "is to obtain") an order for payment of the surplus assets to the applicant on termination of the Plan.

(b) Clause 8(2)(b) of the Regulation - Eligibility as a "Grandfathered Plan":

Provide information supporting the applicant's position that the application is eligible to proceed under the "grandfathering provision".

The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as (enter the reason why the plan is a "grandfathered plan", i.e., "the notice of proposal to wind up was filed prior to December 18, 1991" - enter the date of filing).

Representations

Indicate if any objections or representations were received. Refer to the attachment where copies of the objections or representations and any response(s) of the applicant are located.

Attachments

The applicant should provide an index of all attachments to the Application. It is preferred that the attachments be listed in an order which corresponds to the order of the subject matter under this document, and where applicable, in chronological order. Where an Application is a bound application, the relevant Tabs should be listed.



SECTION:	Surplus
INDEX NO.:	S900-400
TITLE:	Partial Wind Up - Identification and Administration of Surplus - Compliance with PBA, ss. 70(6)
APPROVED BY:	The Commission
PUBLISHED BBS:	June 28, 1994
PUBLISHED BULLETIN:	Summer 1994 Bulletin 5/2 p. 46
EFFECTIVE DATE:	June 23, 1994
REVISED DATE:	

Partial Wind Up - Identification and Administration of Surplus - Compliance with PBA, ss. 70(6)

Section 70(6) of the Pension Benefits Act, R.S.O. 1990 (the "Act") states:

On the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.

It is the Commission's position that the rights and benefits referred to in subsection 70(6) include any entitlement to surplus that would exist assuming that a full wind up of the plan occurred on the date of partial wind up. Where a surplus would exist on full wind up, it is not acceptable to identify partial wind up assets as those equal only to the partial wind up liabilities.

Clause 70(1)(c) of the Act requires that the Administrator of a plan that is to be wound up completely or in part file a wind up report that sets out "the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits". Accordingly, on partial wind up, it is the actuary's responsibility to identify assets related to the partial wind up in the same manner as the Act would require on full wind up. The determination of the amount of assets related to a partial wind up must be done on a basis that is appropriate in the circumstances. Furthermore, where surplus is identified as a portion of the assets related to a partial wind up, it is the Administrator's responsibility to administer the surplus as required by the Act and Regulation 909, R.R.O. 1990, as amended (the "Regulation").

If a plan would be in a surplus position if it fully wound up at the date of the partial wind up, the failure to identify surplus related to the partial wind up is inconsistent with the following requirements of the Act and the Regulation:

- Subsection 70(6) and clause 70(1)(c) of the Act.
- The definition of partial wind up under Section 1 of the Act which provides that, “partial wind up” means the termination of a part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan.
- Clause 28(2)(q) of the Regulation which requires, “... a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries.”
- Subsection 8(1) of the Regulation which states, “... No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,
 - (a) the payment is to be made to or for the benefit of members, former members and other persons, other than an employer, who are entitled to payments under the pension plan on the date of wind up; or
 - (b) the payment is to be made to an employer with the written agreement of,
 - i) the employer,
 - ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
 - iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.”

Whatever determination the Administrator makes concerning surplus identified on partial wind up, it must be in accordance with the Act, the Regulation and any relevant Commission policies, procedures and administrative practices. Distribution of the assets related to a partial wind up must conform with the proposals set out in the partial wind up report approved by the Superintendent. A supplement to a partial wind up report will be required if the surplus distribution proposals are not reflected in the initial report.



SECTION: Assets

INDEX NO.: A 700-153

TITLE: Asset Transfers Between Insurance Contracts or Policies

APPROVED BY:

PUBLISHED BULLETIN: Summer 1994 Bulletin 5/2 p.48

EFFECTIVE DATE:

REVISED DATE:

Asset Transfers Between Insurance Contracts or Policies

An administrative practice which identified the limited circumstances under which pension plan assets may be transferred from one insurance contracts or policies without the consent of the Superintendent was published in the February, 1992 *PCO Bulletin* (BBS No. A700-152).

The following table summarizes the main circumstances under which transfers of assets may occur and indicates whether the Superintendent's consent is required to be obtained before the transfer is made.

Asset Transfers

From	To	Superintendent's Approval Required
An investment contract or policy	A new investment contract or policy with the same insurance company issued in respect of the same pension plan	No
An investment contract or policy	A new investment contract or policy with a different insurance company issued in respect of the same pension plan	No
An investment contract or policy	A new investment contract or policy with the same insurance company issued in respect of a different pension plan .	Yes
An investment contract or policy	A new investment contract or policy with a different insurance company issued in respect of a different pension plan .	No

Although the purpose of this administrative practice is to clarify the circumstances under which assets held under contracts or policies may be transferred without the Superintendent's consent, the same considerations also apply to assets held under custodial or trust agreements.

Changes to the Surplus Application Review Process Effective on and after September 1, 1994

A detailed administrative practice, which deals with applications to the Commission for surplus distribution to an employer pursuant to sections 78 and 79 of the Act and section 8 of the Regulation, is now available to administrators and is reproduced on page 32 of this issue.

The process for reviewing these applications by PCO staff will change on September 1, 1994 for two main reasons. Firstly, applicants are responsible for ensuring that applications are complete and comply with the Act, regulations, Commission policies and practices. The second reason is that the administrative practice is now available to assist administrators in completing the application.

In the past, applicants submitted the proposed notice to members and a preliminary application to PCO staff for review and comment prior to filing the final application. Staff will no longer review and comment on the proposed notice to members. Also, preliminary applications are no longer required to be submitted. Instead, only final applications that are formatted in the manner described in the administrative practice and which fully and completely meet the requirements set out therein will be processed by staff.

Effective on and after September 1, staff will not process any applications that do not meet **either** the formatting criteria or other requirements set out in the administrative practice. Such applications will be automatically returned to the applicant. Applicants are also reminded that surplus applications must be submitted at least ninety days prior to a Commission meeting for consideration by the Commission at that meeting.

New Consent Form May be Completed by the Administrator

In our continuing efforts to assist administrators and simplify administrative processes, applicants should refer to the new consent form on page 67 of this issue. The form was developed by the Commission and is intended to be filed as part of the final surplus application. Inclusion of this form with the application will expedite filing of Commission consent for surplus distribution under ss. 8(2) of the Regulation with the court.

The Use of Derivatives: Significant Issues for Pension Funds

This article is a slightly revised version of a speech delivered by Jules A. Huot, CFA, Senior Policy Analyst at the Pension Commission of Ontario to the Second Annual Conference on "Derivatives - Design, Regulation, Use" (sponsored by the Canadian Institute) on May 10, 1994 in Toronto, Ontario.

Growth of the Market

One important and well-known development over the last two or three decades has been the growing importance of institutional investors in bond and stock markets. Stock ownership by these institutions has grown from about one fifth of total market value twenty years ago to just under one half today.

Another important development during this period is the increase in the use of exchange-traded futures, not to mention stock options. In the U.S., the volume of trading in futures has grown from 18.2 million contracts to 340 million from 1972 to 1992. Global volume is estimated at 450 million contracts. The value of daily trading exceeds US\$300 billion, and the open interest is valued at above US\$1.4 trillion.

In Canada, securities trading grew from 1986 to 1992 at an average annual growth rate of 14 per cent to a level of \$2.7 trillion. During the same period, the over-the-counter derivatives position of the "Big Six" banks grew by 31 per cent to a notional amount of \$2.2 trillion.

These trends have evolved in parallel. Institutional investors have made very little use of futures or other derivatives. A survey carried out by *Institutional Investor* magazine indicated that only about 28 per cent of U.S. pension funds used futures of any kind for any purpose. Their investment in futures was estimated at less than 1 per cent of assets.

Derivatives are useful portfolio tools to manage risks and enhance returns, yet they have been little used in pension fund portfolios. There are several reasons to explain their low profile: inability to convince clients to use them, resistance to introducing a new "asset class", apprehension of greater risk, lack of knowledge, absence of standardization and complexity of trades. This paper attempts to deal with some of these issues as they affect pension funds.

The Regulatory Framework

The *Pension Benefits Act* of Ontario (the “Act”) and its investment regulations present a mixed regime of prudence and quantitative limits. The latter are rather straightforward and compliance is relatively easy. Although these limits are immutable, the overriding concern is prudence - a concept which presents more subtlety than mere compliance with quantitative limits - which are judged at the overall portfolio level, and in terms of process rather than investment returns.

Prudence

The sections of the Act dealing with prudence and investments are 22 (subdivided into 11 subsections) and 62. The relevant sections read as follows.

Care, diligence and skill

22.--(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special knowledge and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator’s profession, business or calling, ought to possess.

Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Employment of agent

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Responsibility for agent

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent’s suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Investment of pension fund

62. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations. 1987, c.35, s.63.

The Learning Problem

In the present context, the key element is found in subsection 22(2) which states that “The administrator...shall use...all relevant knowledge and skill that...the administrator...ought to possess.” It is quite clear from any casual study of capital markets that futures, options, swaps and other derivatives require a substantial commitment to continuing education. Furthermore, the learning process is never really complete as innovations continue.

Subsection 22(2) of the Act makes it also quite clear that it is no longer acceptable to refrain from pursuing certain investment practices or strategies for lack of knowledge. This presents a quandary for administrators and managers. It is obviously prudent to avoid making investments that one does not understand. But this is not prudent enough. There is a duty to acquire the necessary knowledge to arrive at a conscious and reasoned decision with respect to all available investments.

The risks of doing nothing have recently been highlighted by a court case in the U.S. where a board of directors was successfully sued for not hedging, because the organization had suffered large losses.

The challenge for an organization to venture into a new area is complicated by the various learning styles of individuals. There are basically four ways to learn something new: you can be told about it, you can read about it, you can be shown how it works, or you can proceed by trial and error. Obviously the last method will not be the prudent approach. It will conflict with the requirements of subsection 22(1) of the Act dealing with the care that must be exercised when dealing with the property of another person.

Applicability

Derivative instruments can be useful portfolio management tools for those who know how to use them. Exchange-traded derivatives are fairly straightforward and standardized. Custom designed over-the-counter derivatives are in a constant state of flux, and as such, present the greatest problems to investment committees, money managers, and regulators.

The Regulation to the *Pension Benefits Act* is essentially silent on the use of derivatives, as it is about most types of specific investments. The Regulation is essentially based on prudence and disclosure. It is not based on the nature of the instruments, on the quantity used, nor on their nationality (which is an Income Tax Act question).

Key Questions

The PCO has received a number of inquiries on various aspects of derivatives, and has seen a number of presentations on the uses of derivatives in pension portfolios. This is indicative of at least an awareness of derivatives, and possibly of an interest in them.

Since prudence is principally a matter of process in the fulfilment of fiduciary responsibility, there are a few basic questions a plan administrator should answer about how and why derivatives will be used. The following are some examples, and are not meant to be exhaustive.

Are Derivatives an Asset Class or a Tool?

This is a fundamental question. The answer will set the tone for the whole range of investment strategies, risk profile, performance analysis, and financial reporting for the pension fund.

As already mentioned, the concept of derivatives as an added asset class may be an almost insurmountable obstacle to their use in a pension fund. However, if derivatives are viewed as a tool for managing portfolio risk or to minimize transaction costs, the problem is then one of knowledge, not of philosophy or style.

Jumping ahead to the question of financial reporting and performance analysis, derivatives used as a separate asset class will be shown in a distinct section of the report. They could conceivably include a mixture of puts, calls, forwards, futures, and options

thereon, on both the long and short sides of the market. Their usefulness will be judged purely in relation to the incremental return they produce.

If derivatives are used as a risk management tool, it would be desirable to list them in financial statements with the underlying securities they are modifying, e.g., swaps and futures with bonds, options with equities, currency contracts with international security positions.

Would the Use of Derivatives be Appropriate Given the Current Structure of the Portfolio?

When the “foreign property” limit was 10 per cent and foreign investments were exclusively U.S. stocks, not much thought was given to currency risk, much less country risk. Now that the limit has been increased to 20 per cent, and those foreign securities might include a rather broad spectrum of international investments, the question of hedging the foreign currency component of the pension fund should be addressed. This is not to suggest that a foreign currency position should necessarily be hedged, but that the process of examining the question should be undertaken and documented.

Cash Flows and Policy Changes

When cash flows into and out of the fund are inconsistent with the maintenance of a chosen asset mix policy, the question arises as to whether fixed income or equity swaps might be used to manage these cash flows to minimize transaction costs.

Except for aggressive asset mix shifters, changes in asset mix policy are usually undertaken very gradually. The most common concerns touch upon costs, liquidity, avoidance of drastic moves, and fear of being wrong. Derivatives can ease the transition to a long-term asset allocation, or be used in an asset overlay strategy to re-balance the asset mix.

These are just a few examples of questions to be addressed in the management of a pension fund when assessing the practicality and extent of the use of derivatives. The main concern is managing portfolio risk, but cost containment, return enhancement, policy and strategy implementation are equally valid applications. These questions likely are even more timely in situations where there are several active managers.

Disclosure - Statement of Investment Policies and Goals

The complement to prudence is disclosure, both ex-ante in the Statement of Investment Policies and Goals (SIP&G), and ex-post, in the financial statements and performance reports.

The use or proposed use of derivatives must be indicated in the SIP&G. It would be desirable to do more than simply state that derivatives will be used, and to list the types of derivatives that will be used.

The SIP&G could describe what policies and strategies are being pursued. This could be done by listing the objectives e.g., to modify asset allocations, to adjust duration, to create synthetic securities, to hedge certain positions. Ideally, the specific types of derivatives to be used for each purpose will also be given. The purpose is to inform the reader - whether that person is a fund manager or a plan member - on the policies and the strategies pursued by the fund.

Disclosure - Financial Reporting

How pension plans should report and account for derivatives in their financial statements are dealt with by another speaker. It is generally accepted that certain derivatives - such as futures contracts - are "off-balance sheet" items, and need not be included in a fund statement, or that some do not have an asset value. However, the spirit of full disclosure requires that financial reports include the information necessary to impart fully the investment posture of the fund to a less experienced reader of the statements.

Evaluation

Although the regulator is not mandated to monitor investment performance, the regulator is vitally interested in the question as it affects the funding of pension liabilities. On the other hand, one should be consistent with the principle of full disclosure to beneficiaries, and with the application of care, skill and diligence in the management of a pension fund. Performance reports should measure the effectiveness of a derivatives strategy vis-a-vis its stated objective, and account for the value added from the use of the derivatives.

A good starting point would be the Performance Presentation Standards of the Association for Investment Management and Research (AIMR). These standards recommend complete disclosure of the nature of the strategies for portfolios using derivatives: a description of their use, their amounts,

the frequency of their use, and a discussion of their characteristics. These disclosures should be detailed enough for the administrator or the trustee to assess the effect of all the pertinent factors surrounding the returns and risks of the strategy or portfolio. It is incumbent upon the administrator or the trustee to elicit this information particularly if the administrator or trustee is to act with the appropriate degree of prudence in the supervision of the pension fund.

Summary

To summarize, trading in derivatives has grown to such an extent that it now constitutes a significant part of the capital markets, and these instruments add a new dimension to the management of investment portfolios in general, and pension funds in particular. Plan administrators and fund managers should acquaint themselves with all aspects of the principal characteristics of these vehicles. They should stay up-to-date with new developments and innovations in this field, and assess their applicability to the portfolios under their care. These are the key steps to follow in the prudential process. The complement to the exercise of prudence is full, true and meaningful disclosure and evaluation.

Invitation to Pension Professionals to Serve on PCO Advisory Committees

Advisory committees serve a vital function in the area of policy formulation and provide a link with all segments of the pension industry. The committees forge two-way communications between the legal, actuarial, investment and accounting and auditing communities, and the PCO.

The term of office of a number of committee members expire in September. Although some members may seek re-appointment, there are likely to be some vacancies. Qualified pension practitioners are invited to contact the Chair of the Committee of interest to enquire about terms of reference specific to that committee. The committees include:

- The Actuarial Advisory Committee, chaired by Marvin Ens
- The Legal Advisory Committee, chaired by David Vincent
- the Investment Advisory Committee, chaired by John Ilkiw
- the Accounting and Auditing Committee, chaired by Bruce Winter (there are no vacancies on this committee at this time)

Practitioners should indicate their interest in writing to the Chair of the committee (the addresses of Chairs are listed below). Committees generally get underway on September 1 of each year, so prospective committee members are encouraged to let their interest be known to the Chair as soon as possible.

Terms of Reference Common to All Advisory Committees

At the request of the PCO, the committees will review and comment on proposed amendments to the *Pension Benefits Act* and Regulations, and on Commission policies and amendments prior to publication for comment or, where the change is to be effective on publication, prior to finalization. The committees will also review and comment on other matters as the Commission may request. The Director of the Policy and Research Branch serves as a liaison between the committees and the PCO but, typically, PCO policy and professional staff work directly with committees on specific policy or review projects.

The committees may initiate and focus the PCO's attention on matters that, in the committees' opinion, should be reviewed including policies, practices and procedures. The committees report to the Chairman of the Commission, at least annually, on the initiatives of the committees and to raise any matters the committees consider should be addressed by the Commission.

Appointments and Terms

Committee members are appointed, generally for a two year term, by the Chairman of the Commission with advice from the Chair of the committee, the professional community, committee members and from other pension professionals practising in the field. The input from a variety of sources is valued and ensures that the committees are balanced and representative of the areas of practice in the field, e.g. on the actuarial advisory committee it is desirable to have representation from consulting firms, insurance companies, plan sponsors and others.

The addresses of the committee Chairs are:

Actuarial Advisory Committee

Mr. Marvin Ens
William M. Mercer Limited
BCE Place, 18th Floor
161 Bay Street
P.O. Box #501
Toronto, ON M5J 2S5

Legal Advisory Committee

Mr. David Vincent
Fasken, Campbell, Godfrey
P.O. Box 20
Toronto-Dominion Bank Tower
42nd Floor, Toronto-Dominion Centre
Toronto, ON M5K 1N6

Investment Advisory Committee

Mr. John H. Ilkiw, CFA
Vice President
Frank Russell Canada Limited
Suite #808
390 Bay Street
Toronto, ON M5H 2Y2

Your Questions Answered

We are told by our readers that "Your Questions Answered" is one of the most popular sections of the PCO Bulletin. The section is based on enquiries from our readers and the facts that they provide to us. It must be remembered that, although you may believe you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case and the applicable law. Accordingly, the answers to the questions in this section have no legal authority nor should be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.

Q. Is it possible to pay pension payments from a pension plan registered in Ontario in a form which duplicates the annual minimum and maximum withdrawal amount schedules provided for under a Life Income Fund?

A. Revenue Canada has advised the PCO in writing that the payment of "RRIF type" benefits from a registered pension plan are prohibited by the Regulations under the Income Tax Act (Canada). The Regulations stipulate that lifetime retirement benefits must be paid in equal, periodic amounts except under certain circumstances. Exceptions to the equal, periodic rule do not include an exception which would allow "RRIF type" payments to retirees.

Q. Does the legislated spousal entitlement to a 60 per cent joint and survivor benefit under section 44 of the PBA only apply to benefits accrued on and after January 1, 1987?

A. The time period over which a pension benefit has accrued is not a consideration for the purposes of section 44. The deciding factor is the date that retirement benefits (pre-reform and/or post-reform accruals) commence to be paid to a retiree. Section 44 has no application if the first instalment payment of a pension was due to be paid at any time up to and including December 31, 1987. Any pension that was not in pay by December 31, 1987 is subject to section 44.

Q. The PCO administrative practice under BBS Index No. G100-700 (which was originally published in the December 1990 issue of the PCO Bulletin) deals with benefit accruals which are determined in accordance with a schedule that is based on a band of hours worked within a specified period of time. Negotiated benefit schedules under MEPPs are used as examples. Is a benefit schedule that is not acceptable under a MEPP, acceptable for registration as part of a single employer plan?

A. No. MEPPs were highlighted in the administrative practice because this type of plan

is more likely to associate benefit accrual with hours of employment. The administrative practice indicates that benefit schedules based on bands of hours which are not truly reflective of the actual hours each member works are not accepted by the PCO. This applies to every MEPP or employer-sponsored pension plan that establishes hours of employment as the base for determining benefit accrual or required contributions.

Q. If a terminated plan member with a spouse has elected to transfer a benefit value to a Life Income Fund (a LIF), must the plan administrator ensure that the spouse has consented to the purchase of a LIF?

A. Yes. The plan administrator may not comply with the election until the spouse's written consent has been obtained.

Q. May active members of a pension plan receive a refund of additional voluntary contributions?

A. Yes, provided that the terms of the pension plan give active members the right to a refund of additional voluntary contributions with interest, those assets may be paid out of the plan fund in accordance with subsection 63(2) of the PBA. There is no requirement to obtain the Commission's consent to a refund of additional voluntary contributions.

However, if a contributory pension plan is amended to retroactively provide benefits on a non-contributory basis, required member contributions made to the effective date of the amendment are usually "deemed" to be additional voluntary contributions. Under these circumstances, "deemed" additional voluntary contributions may not be refunded to plan members without the consent of the Commission. Please refer to the administrative practice under BBS Index No. R400-100 for conditions applicable to "deemed" additional voluntary contributions.

BBS Index

The following policies were uploaded on July 22, 1994. We replaced material uploaded on June 28 because of suspected defective software used to prepare the files. In addition, several files uploaded on April 19: R500-201, R500-251 and S500-900 now include the French versions of Form 1, Form 1.1, Forms 3 and 4 (spousal waivers) and 1 PR (form) and spousal waivers.

A350-100.EXE	POLICY: ADVISORY COMMITTEES TO THE PCO invitation to serve on Advisory Committees to the PCO (Summer 1994 Bulletin 5/2 p. 53)	B900-200.EXE	POLICY: BROCHURES Brochure "When your pension plan winds up: what it means to members" (available only in WordPerfect v5.1 .EXE) Distributed previously.
A700-153.EXE	POLICY: ASSETS asset transfers between insurance contracts or policies (clarification of A700-152) (Summer 1994 Bulletin 5/2 p. 48)	B900-201.EXE	POLICY: BROCHURES Une Publication "Lorsque votre régime de retraite est liquidé: ce que cela signifie pour les participants" (available only in WordPerfect v5.1 .EXE) Distributed previously.
A700-225.EXE	POLICY: ASSETS superintendent consent required for asset transfer under subsection 81(8) (Spring 1994 Bulletin 5/1 p. 10*)	G100-701.EXE	POLICY: GRADUAL AND UNIFORM benefit accrual in a MEPP - clarification (Summer 1994 Bulletin 5/2 p.54)
B100-150.EXE	POLICY: BENEFITS form of benefit payment (Summer 1994 Bulletin 5/2 p.54)	I400-305.EXE	POLICY: INVESTMENT OF PENSION FUNDS use of derivatives - significant issues for pension funds (Summer 1994 Bulletin 5/2 p.49)
B900-100.EXE	POLICY: BROCHURES Brochure: "Understanding your pension plan: a guide for members of employer sponsored pension plans" (available only in WordPerfect v5.1 .EXE) Distributed previously.	L050-702.EXE	POLICY: LIFE INCOME FUND spousal consent required (Summer 1994 Bulletin 5/2 p.54)
B900-101.EXE	POLICY: BROCHURES Une Publication: "Comprendre votre régime de retraite. Guide destiné aux participants à des régimes de retraite organisés par l'employeur" (available only in WordPerfect v5.1 .EXE) Distributed previously.	P300-253.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES how to obtain forms and publications on and after September 15, 1994 (Distribution from Oshawa) (Summer 1994 Bulletin 5/2 p.74)
		P300-255.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES tips for dealing with the PCO (Spring 1994 Bulletin 5/1 p. 32*)

P300-705.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES role of presiding officer at pre-hearing conference (Spring 1994 Bulletin 5/1 p. 8*)		(IPR Form available only in WordPerfect v5.1 .EXE) (Spring 1994 Bulletin 5/1 p. 37*)
R400-106.EXE	POLICY: REFUND OF CONTRIBUTIONS TO PLAN MEMBERS refund of additional voluntary contributions to active members PBA ss. 63(2) (Summer 1994 Bulletin 5/2 p.54)	S900-253.EXE	POLICY: SURPLUS consent form for filing Commission consent to surplus withdrawal with court, O. Reg. 909, ss. 8(2) and previous regulation ss. 7a(2)(c) (Summer 1994 Bulletin 5/2 p. 67)
R500-150.EXE	POLICY: REGISTRATION common problems (Spring 1994 Bulletin 5/1 p. 31*)	S900-400.EXE	POLICY: SURPLUS partial wind up-identification and administration of surplus - compliance with PBA, ss. 70(6) (Summer 1994 Bulletin 5/2 p. 46)
R500-201.EXE	POLICY: REGISTRATION preparation of an application for registration of a pension plan English and French versions (Form 1 available only in WordPerfect v5.1 .EXE) (Spring 1994 Bulletin 5/1 p. 12*)	S900-501.EXE	POLICY: SURPLUS surplus distribution to an employer PBA, s. 78 and 79 and Reg. 909, s. 8 (Summer 1994 Bulletin 5/2 p. 32)
R500-251.EXE	POLICY: REGISTRATION preparation of an application for registration of a plan amendment, English and French versions (Form 1.1 available only in WordPerfect v5.1 .EXE) (Spring 1994 Bulletin 5/1 p. 23*)	S900-502.EXE	POLICY: SURPLUS changes to the surplus application review process effective on Sep 1, 1994 (Summer 1994 Bulletin 5/2 p. 49)
S500-305.EXE	POLICY: SPOUSAL RIGHTS entitlement to spousal joint and survivor benefit (Summer 1994 Bulletin 5/2 p.54)	S900-900.EXE	POLICY: SURPLUS allocation of surplus distributed to members and former members on wind up (Spring 1994 Bulletin 5/1 p. 28*)
S500-900.EXE	POLICY: SPOUSAL RIGHTS spousal waivers of joint and survivor pension and pre- retirement death benefit English and French versions (Forms 3 & 4 available only in WordPerfect v5.1 .EXE) (Spring 1994 Bulletin 5/1 p. 34*)	DECISIONS:	
S700-125.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) investment policy return English and French versions	XDEC-01.EXE	DECISION: Otis Canada, Inc. Pension Plan for Draftsmen, Local 164 - C-017647 Feb 9, 1989 (Feb 1990 Bulletin 1/1, p. 16)
		XDEC-02.EXE	DECISION: Otis Canada Inc. Pension Plan for United Steel Workers of America, Local 7062 C-004669, Jun 13, 1989

	Mail distribution prior to establishment of PCO Bulletin	XDEC-10.EXE	DECISION: Pension Plan for Union Employees of Arrowhead Metals Ltd. - C-017136 Mar 26, 1992 (Jun 1992 Bulletin 3/1, p. 19)
XDEC-03.EXE	DECISION: Dominion Stores Limited Retirement Income Plan for Union Employees - C-016249, C-005188, Sep 28, 1989 Mail distribution prior to establishment of PCO Bulletin	XDEC-11.EXE	DECISION: Massey Combines Corp. Salaried Pension Plan - C-100879 Jun 18, 1992 (Oct 1992 Bulletin 3/2, p. 36)
XDEC-04.EXE	DECISION: Otis Canada Inc. Pension Plan for United Steel Workers of America, Local 7062 - C-004669 Feb 8, 1990 (Feb 1990 Bulletin 1/1, p. 11)	XDEC-12.EXE	DECISION: Stelco Inc. Retirement Plan for Salaried Employees - C-6968 Jul 27, 1992 (Oct 1992 Bulletin 3/2, p. 29)
XDEC-05.EXE	DECISION: Hospitals of Ontario Pension Plan - C-001500, Nov 22, 1990 (Dec 1990 Bulletin 1/4, p. 12)	XDEC-13.EXE	DECISION: Brewers Retail Pension Plan for Bargaining Unit Employees, C-254, Aug 4, 1992 (Oct 1992 Bulletin 3/2, p. 24)
XDEC-06.EXE	DECISION: General Motors Canadian Hourly-rated Employees' Pension Plan - C-008700, Jan 25, 1991 (Mar 1991 Bulletin 2/1, p. 17)	XDEC-14.EXE	DECISION: Brewers Retail Pension Plan for Bargaining Unit Employees, C-254, Aug 26, 1992 Mail distribution prior to establishment of PCO Bulletin
XDEC-07.EXE	DECISION: Cluett, Peabody & Co. Canada, Limited Employee Retirement Plan, Van Raalte Division, C-7208, May 6, 1991 (Jul 1991 Bulletin 2/2, p. 15)	XDEC-15.EXE	DECISION: Retirement Plan for the Employees of Saynor Varah Inc. and Affiliated Companies C-013393, Oct 22, 1992 (Dec 1992 Bulletin 3/3, p. 21)
XDEC-08.EXE	DECISION: Hospitals of Ontario Pension Plan (HOOPP) - C-001500 Jun 26, 1991 (Nov 1991 Bulletin 2/3, p. 16)	XDEC-16.EXE	DECISION: Stelco Inc. Retirement Plan for Salaried Employees - C-6968 Dec 4, 1992 (Mar 1993 Bulletin 3/4, p. 24)
XDEC-09.EXE	DECISION: American Federation of Musicians' and Employers' Pension Welfare Fund (Canada) - C-010382 Jun 27, 1991 (Nov 1991 Bulletin 2/3, p. 21)	XDEC-17.EXE	DECISION: Stelco Inc. Retirement Plan for Salaried Employees - C-6968 Dec 4, 1992 (Aug 1993 Bulletin 4/1, p. 40)

XDEC-18.EXE DECISION:
| Stelco Inc. Retirement Plan for
| Salaried Employees - C-6968
| Mar 18, 1993
| (Aug 1993 Bulletin 4/1, p. 48)

XDEC-19.EXE DECISION:
| Western Star Trucks Inc.
| Pension Plan for Non-bargaining
| Employees - C-18086
| Sep 21, 1993
| (Dec 93-Jan 94 Bulletin 4/2,
| p. 35)

XDEC-20.EXE DECISION:
| Retirement Income Plan of
| United Dominion Industries
| Limited, C-1470, Mar 24, 1994
| (Summer 1994 Bulletin 5/2,
| p. 68)

REGULATIONS

YREG-01.EXE REGULATION:
| O. Reg. 408/94 (English)
| (ss. 47(9), 47(10))
| Filed on June 24, 1994
| (Summer 1994 Bulletin 5/2,
| p. 7)**

YREG-02.EXE REGULATION:
| O. Reg. 408/94 (French)
| (ss. 47(9), 47(10)).
| Filed on June 24, 1994
| (Summer 1994 Bulletin 5/2,
| p. 7)**

YREG-03.EXE REGULATION:
| O. Reg. 409/94 (English)
| Filed on June 24, 1994
| (Summer 1994 Bulletin 5/2,
| p. 7)**

YREG-04.EXE REGULATION:
| O. Reg. 409/94 (French)
| Filed on June 24, 1994
| (Summer 1994 Bulletin 5/2,
| p. 7)**

YREG-05.EXE REGULATION:
| Finance Minister announces
| changes to pension rules -
| News release and fact sheets:
| (Summer 1994 Bulletin 5/2,
| p. 3)

YREG-06.EXE REGULATION:
| Explanatory notes on
| content of amendments to
| Regulation (O. Reg. 409/94)
| (Summer 1994 Bulletin 5/2,
| p. 5)

CAPSA

ZCAPSA01.EXE APPROVED VENDORS OF
| LIFS AND LIRAS
| May 1994 - Manitoba
| (available only in WordPerfect
| v5.1 .EXE)

ZCAPSA02.EXE APPROVED VENDORS OF
| LIFS, LIRAS and LRIFs
| June 1994 - Saskatchewan
| (available only in WordPerfect
| v5.1 .EXE)

ZCAPSA03.EXE APPROVED VENDORS OF
| LIFS and LIRAS
| July 1994 - Nova Scotia
| (available only in WordPerfect
| v5.1 .EXE)

ZCAPSA04.EXE APPROVED VENDORS OF
| LIFS and LIRAS
| July 1994 - Québec
| (available only in WordPerfect
| v5.1 .EXE)

* The articles appearing in the Spring 1994 Bulletin were uploaded to BBS on April 19, 1994. The Summer 1994 articles will be uploaded in July, 1994.

** Regulations 408/94 and 409/94 were uploaded to the BBS on June 28, 1994.

Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for Employees of Sainthill Levine, Division of Work Wear Corporation of Canada Ltd. (C-16930)
- 2) The Pension Plan for Management and General Employees of Office Analysts and Business Systems Limited (C-12433)

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) T.A.G. Apparel Group Inc. Pension Plan for Salaried Employees of Penmans Apparel Inc. (C-101674), (effective February 27, 1990), May 18, 1994
- 2) T.A.G. Apparel Group Inc. Pension Plan for Hourly Paid Staff of Penmans (C-101676), (effective February 27, 1994), May 18, 1994
- 3) Pension Plan for Employees of A.C. Wickman Machine Tool, a Division of Williams & Wilson Ltd., (C-104425), (effective August 23, 1994), May 18, 1994

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1994 Commission Meeting Dates

The Pension Commission will convene on the following Thursdays in 1994:

July 21, September 22, October 20, November 17, December 15. The August 25th meeting has been cancelled.

1995 Dates for Commission Meetings

The Pension Commission will convene on the following Thursdays in 1995:

January 26, February 23, March 30, April 27, May 25, June 29, July 27, September 28, October 26, November 23, and December 14. The August 31st meeting has been cancelled.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Chair
Monica J. Townson, Vice Chair
Darcie L. Beggs
M. David R. Brown
Kathryn M. Bush
Donald G. Collins
C. S. Kit Moore
Robert F. Nickerson
Joyce A. Stephenson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. requested hearings with respect to a Notice of Proposal to Make an Order on each of the above plans issued by the Superintendent of

Pensions March 3, 1993 pursuant to s. 69 of the PBA that the plans be wound up in part effective September 27, 1991. A pre-hearing conference held October 1, 1993 joined the two hearings. The hearing was held May 2, 3, June 7, and 8, 1994. Judgment reserved.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 regarding Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die.

TIE/communications Canada Inc. Pension Plan for Employees (C-9884)

A pre-hearing conference was held January 7, 1994, before Ms. K. Bush, presiding member, regarding an application for Commission consent to the payment of surplus on wind up to TIE/communications Canada Inc. Hearing set for August 30 and 31, 1994.

Sheet Metal Workers' Local Unions and Councils Pension Plan (C-15249)

Request for hearing with respect to a decision of the Superintendent of Pension dated May 25, 1994 refusing to issue an order that the plan be administered in accordance with section 8(1)(e) and refusing to reject a plan amendment. A pre-hearing conference will be held September 8, 1994. Prof. Gillese presiding.

Westinghouse Canada Inc. Consolidated Pension Plan (C-9356)

A request for Hearing pursuant to a Notice of Proposal to Make an Order requiring the plan be wound up in part effective October 1, 1992, dated August 23, 1993. A pre-hearing conference will take place July 14, 1994. Prof. Gillese presiding.

Otis Canada, Inc. Pension Plan for Draftsmen Local 164, Ontario Registration Number C-17647

Application for Commission consent to the payment of surplus to Otis Canada Inc. A pre-hearing conference has been set for August 11, 1994. Prof. Gillese presiding.

**Commission Decisions - Applications
Approved Since February, 1994**

Applications Approved Under S. 8 of Reg. 909, R.R.O. 1990, as amended, and Ss. 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court

At the Commission meeting held April 28, 1994, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) The Retirement Plan for Bargaining Employees of Westclox Canada Limited (C-19592) - Application by Talley Canada Inc.

In the calculation of the surplus attributable to employee and employer contributions, the plan actuary did not take into account contributions of all members who participated in the plan as required by the Commission's policy. The calculation was based only on members at the date of wind up. The Commission accepted the applicant's explanation that the Commission's policy was announced after the issuance of the notice containing this information and that the high rates of membership turnover experienced by the plan during its decades of existence prevented the actuary from performing the calculation based on contributions of all plan members.

Payment of surplus to Talley Canada Inc. from The Retirement Plan for Bargaining Employees of Westclox Canada Limited, C-19592, in the amount of \$402,000 as at August 1, 1991 plus investment earnings thereon to the date of payment less \$127.45 as at May 1, 1988 plus interest thereon to be paid to a member.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) The Pension Retirement Plan for the Employees of Westclox Canada Limited (C-4036) - Application by Talley Canada Inc.

In the calculation of the surplus attributable to employee and employer contributions, the plan actuary did not take into account contributions of all members who participated in the plan as required by the Commission's policy. The calculation was based only on members at the date of wind up. The Commission accepted the applicant's explanation that the Commission's policy was announced after the issuance of the notice containing this information and that the high rates of membership turnover experienced by the plan during its decades of existence prevented the actuary from performing the calculation based on contributions of all plan members.

The Commission, after considering the issues fully, agreed with the findings of the court that the applicant was entitled to surplus and the agreement to payment of court costs incurred by the members.

Payment of surplus to Talley Canada Inc. from The Retirement Plan for Bargaining Employees of Westclox Canada Limited, C-19592, in the amount of \$964,000 as at August 1, 1991 plus investment earnings thereon to the date of payment less the \$1,000.24 in costs incurred by two individuals.

At the Commission meeting held May 26, 1994, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Retirement Plan for the Employees of Philipp Brothers (Canada) Ltd. (C-24826)

Payment of surplus to Philipp Brothers (Canada) Ltd. from the Retirement Plan for the Employees of Philipp Brothers (Canada) Ltd., C-24826, in the amount of \$519,874 as at December 31, 1985 plus investment earnings thereon to the date of payment (estimated to be \$1,306,363 as at June 1, 1993).

At the Commission meeting held June 23, 1994, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Revised Retirement Plan (1978) for Designated Executives of Nashua Canada Limited and Associated Companies (C-18361)

Payment of surplus to Nashua Photo Limited, formerly Nashua Canada Limited, from the Revised Retirement Plan (1978) for Designated Executives of Nashua Canada Limited and Associated Companies, C-18361, in the amount of \$133,353 as at October 31, 1990 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission. The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

b) The Retirement Plan for Salaried Employees of Nashua Canada Limited and Associated Companies (C-14899)

Payment of surplus to Nashua Photo Limited, formerly Nashua Canada Limited, from The Retirement Plan for Salaried Employees of Nashua Canada Limited and Associated Companies, C-14899, in the amount of \$308,043 as at October 31, 1990 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission. After all best efforts have been made for distribution of basic benefits, the remaining benefits may be paid into Court. The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

Applications Under Clause 8(1)(b) of Reg. 909, R.R.O. 1990 (as amended by O.R. 743/91) and Ss. 78(1) of the PBA - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held February 24, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of

Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Pension Plan for Employees of Head/Tyrolia Sports Canada Inc. (C-103904)

Payment of surplus to Head/Tyrolia Sports Canada Inc. from the Pension Plan for Employees of Head/Tyrolia Sports Canada Inc., C-103904, in the amount of \$1,449,256 as at July 31, 1992. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) Retirement Plan for Employees of D. C. Heath Canada Limited (C-12381)

Payment of surplus to D. C. Heath Canada Limited from the Retirement Plan for Employees of Machlett Canada Limited, C-12381, in the amount of \$22,561 as at December 31, 1990.

c) Pension Plan for Executive Employees of Real Time, a Division of Memotec Data Inc. (C-15225) - Application by Teleglob Inc. (formerly Real Time, A Division of Memotec Data Inc.)

Payment of surplus to Teleglob Inc. from the Pension Plan for Executive Employees of Real Time, A Division of Memotec Data Inc., C-15225, in the amount of \$250,935 as at July 31, 1990.

At the Commission meeting held March 24, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) Pension Plan for Salaried Employees of Chartcan Inc. (C-15043) - Application by Tubular Steel Products Ltd.

Payment of surplus to Tubular Steel Products Ltd. from the Pension Plan for Salaried Employees of

Chartcan Inc., C-15043, in the amount of \$69,418.20 as at June 30, 1991, plus investment earnings thereon to the date of payment less a proportionate share of all expenses associated with the wind up and surplus application. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) Pension Plan for Senior Directors of Canadian Carpet Institute (C-19875)

Payment of surplus to Canadian Carpet Institute from the Pension Plan for Senior Directors of Canadian Carpet Institute, C-19875, in the amount of \$50,568.01 as at January 1, 1991, plus investment earnings thereon to the date of payment less \$500 for payment of administration fees.

c) Pension Plan for Senior Staff Employees of Tormon Assembly Agency Limited (C-11196) - Application by Tormon Ltd. (formerly Tormon Assembly Agency Limited)

Payment of surplus from the Pension Plan for Senior Staff Employees of Tormon Assembly Agency Limited, C-11196, to Tormon Ltd. in the amount of \$897,559.13 as at August 1, 1988, plus investment earnings thereon to the date of payment and to a payment of surplus to Conship Ltd. in the amount of \$119,068.13 as at August 1, 1988. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held April 28, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) The Employees' Pension Plan for Salaried Employees of Shorewood Packaging Corp. of Canada Limited (C-100101)

Payment of surplus to Shorewood Packaging Corp. of Canada Limited from The Employees' Pension Plan for Salaried Employees of Shorewood Packaging Corp. of Canada Limited, C-100101, in the amount of \$502,743 as at March 31, 1993. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held May 26, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) Retirement Plan of Viacom Canada Limited (C-12531)

Payment of surplus to Viacom Canada Limited from the Retirement Plan of Viacom Canada Limited, C-12531, in the amount of \$257,930 as at December 31, 1991:

At the Commission meeting held June 23, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) Hunt Bros. Limited Executive Employees Pension Plan (C-16406)

Payment of surplus to Hunt Bros. Limited from the Hunt Bros. Limited Executive Employees Pension Plan, C-16406, in the amount of \$145,044 as at July 1, 1990.

b) Merrill Lynch Canada Inc. Pension Plan Number 16347 (C-100533)

Payment of surplus to Merrill Lynch Canada Inc. from the Merrill Lynch Canada Inc. Pension Plan

Number 16347, C-100533, in the amount of \$50,136 as at December 31, 1987.

c) Merrill Lynch Canada Inc. Pension Plan Number 17556 (C-100542)

Payment of surplus to Merrill Lynch Canada Inc. from the Merrill Lynch Canada Inc. Pension Plan Number 17556, C-100542, in the amount of \$197,145 as at June 30, 1989.

d) Merrill Lynch Canada Inc. Pension Plan Number 15580 (C-100529)

Payment of surplus to Merrill Lynch Canada Inc. from the Merrill Lynch Canada Inc. Pension Plan Number 15580, C-100529, in the amount of \$54,496 as at July 31, 1987.

e) Merrill Lynch Canada Inc. Pension Plan Number 14041 (C-100523)

Payment of surplus to Merrill Lynch Canada Inc. from the Merrill Lynch Canada Inc. Pension Plan Number 14041, C-100523, in the amount of \$74,656 as at March 31, 1989.

Application for Surplus Withdrawal - Continuing Pension Plan: s. 78(1) PBA & S.10 of Regulation 909, R.R.O. 1990, as amended

At the Commission meeting held March 24, 1994, pursuant to ss. 78(1) of the PBA and s.10 of the Reg., the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment from a continuing plan as follows:

a) Unicorp Canada Corporation Executive Pension Plan (C-103442)

Payment of surplus from a continuing pension plan to Unicorp Energy Corporation from the Unicorp Canada Corporation Executive Pension Plan, C-103442, in the amount of \$64,364 as at December 31, 1990.

Application Approved under ss. 78(1), PBA & Clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O.R. 743/91, Request for Consent to Surplus Withdrawal on Plan Wind Up and ss.63(7) & (8), PBA, Request for Consent to Refund of Employee Contributions

At the Commission meeting held April 28, 1994, the Commission consented pursuant to ss. 78(1) of the

PBA & Clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O.R. 743/91 and ss. 63(7) and (8) of the PBA to the following:

a) Valley Camp Inc. Pension Plan (C-3268)

In the calculation of the surplus attributable to employee and employer contributions, the plan actuary did not take into account contributions of all members who participated in the plan as required by the Commission's policy. The calculation was based only on members at the date of wind up. The Commission accepted the applicant's explanation that the Commission's policy was announced after the issuance of the notice containing this information and that the calculation was based on the employee data that was available.

The issue of surplus related to a recent partial wind up were raised with the applicant by staff and the members affected by the partial wind up are now included in the present surplus application which has 100% member consent.

1. a) refund members' and deferred vested members' required contributions in the aggregate amount of \$221,776 as at December 31, 1992 plus investment earnings thereon to the date of payment, and
- b) refund required contributions of former members who elected a commuted value transfer of their deferred vested pension benefit at their dates of termination of employment [other than those in item (c) below] in the aggregate amount of \$10,166 as at December 31, 1992 plus investment earnings thereon to the date of payment, and
- c) refund required contributions of former members who elected the transfer option as a result of the partial plan wind-up effective April, 1988 in the aggregate amount of \$231,180 as at December 31, 1992 plus interest (average 5 year bank rate) to the date of payment.
2. Payment of surplus to Valley Camp Inc. from the Valley Camp Inc. Pension Plan, C-3268, in the amount of \$1,829,495 as at December 31, 1992. This consent shall not be effective

until the administrator satisfies the Commission that all benefits, benefit enhancements, including any enhancements arising from the surplus sharing agreement, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Approved under Ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held May 26, 1994, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) Confederation Life Insurance Company Pension Plan for Canadian Salaried Employees (C-1343)

Refund of eligible members' required contributions from the Confederation Life Insurance Company Pension Plan for Canadian Salaried Employees, C-1343, in the amount of approximately \$10,000,000 plus interest to the date of payment. Eligible members are those members who elect to retire with a retirement date between August 31, 1994 and December 31, 1994 inclusive, or under any special retirement programme in effect for retirements during such period.

Applications Approved under ss. 78(4) of the PBA - Return of Overpayment

At the Commission meeting held February 24, 1994, the Commission consented pursuant to ss. 78(4) of the PBA to the refund of overpayments as follows:

a) The Retirement Plan for Salaried Employees of Liquid Carbonic Inc. (C-14880)

Refund of an overpayment in the amount of \$806,500 made in 1993 from the Retirement Plan for Salaried Employees of Liquid Carbonic Inc., C-14880.

b) The Retirement Plan for Hourly-Paid Employees of Liquid Carbonic Inc. (C-1264)

Refund of an overpayment in the amount of \$131,280 made in 1993 from the Retirement Plan for Hourly-Paid Employees of Liquid Carbonic Inc., C-1264.

At the Commission meeting held May 26, 1994, the Commission consented pursuant to ss. 78(4) of the PBA to the refund of an overpayment as follows:

a) Pension Plan for Designated Employees of Blue-Con Inc. (C-103595)

Refund of an overpayment of contributions in the amount of \$17,871 to Blue-Con Inc. from the Pension Plan for Designated Employees of Blue-Con Inc., C-103595.

Pension Benefits Guarantee Fund ("PBGF")

On February 24, 1994, the Commission, pursuant to ss. 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to ss. 83(1) of the PBA that the PBGF applies to the following pension plan:

a) Pension Plan for Salaried Employees of Penmans Apparel Inc. (C-101674) - TAG Apparel Group Inc.

On March 24, 1994, the Commission, pursuant to ss. 90(1) of the PBA, issued Notices of Proposal to make a Declaration pursuant to ss. 83(1) of the PBA that the PBGF applies to the following pension plans:

a) Pension Plan for Designated Hourly Paid Employees of Penmans Apparel Inc. (C-101676) - TAG Apparel Group Inc.

b) Pension Plan for Union Employees of the Rexdale Plant of Chromalox Inc. (C-103203)

c) Pension Plan for Employees of Canada Decal Inc. (C-19796)

d) MacLeod-Stedman Incorporated Retirement Pension Plan (C-7623) - Registered in Manitoba

On May 26, 1994, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans for the following reasons:

a) T.A.G. Apparel Group Inc. Pension Plan for Salaried Employees of Penmans Apparel Inc. (C-101674)

(a) The Employer is bankrupt within the meaning of the Bankruptcy Act.

(b) Although the Pension Plan was established within three years of the date of wind up, the Commission is satisfied that the defined

benefits provided under the plan are not exempt from the application of the Guarantee Fund for the following reasons:

i) The evidence shows that the Pension Plan assumed responsibility for pension benefits accrued under the pension plan of Dominion Textile Inc. pursuant to the purchase by T.A.G. Apparel Group Inc. of the Penmans Division of Dominion Textile Inc. (the "Predecessor Employer") as contemplated by subsection 80(2) of the Act.

ii) On October 1, 1968 the Dominion Textile Inc. Staff Retirement Income Plan (the "Predecessor Plan") was established.

iii) Pursuant to the agreement of purchase and sale, assets and liabilities were transferred from the Predecessor Plan to the Pension Plan to provide for the pension benefits earned by the salaried employees of Penmans prior to October 28, 1987 (the date of purchase and sale). The Administrator has advised the Commission that on April 11, 1988 assets in the amount of \$833,108 were transferred from the Predecessor Plan to the Pension Plan. The Administrator has also advised that at the date of the transfer of assets, the plan was fully funded.

The Pension Plan text also states that entitlements and benefits accrued under the Predecessor Plan are incorporated and preserved in the Pension Plan.

iv) The Commission is satisfied that the Pension Plan was established pursuant to an arms length transaction.

(c) The wind-up report filed by the Administrator indicates that the funded ratio of the defined benefit portion of the Pension Plan is approximately 27% as of the date of wind up.

(d) The administrator has advised that there are no assets available in the estate for distribution to preferred and ordinary secured creditors and, therefore, any claim for the shortfall in the Pension Plan asserted

against the estate pursuant to section 75 of the Act would have no value.

b) T.A.G. Apparel Group Inc. Pension Plan for Hourly Paid Staff of Penmans (C-101676)

(a) The Employer is bankrupt with the meaning of the Bankruptcy Act.

(b) Although the Pension Plan was established within three years of the date of wind up, the Commission is satisfied that the defined benefits provided under the plan are not exempt from the application of the Guarantee Fund for the following reasons:

i) The evidence shows that the Pension Plan was to assume responsibility for pension benefits accrued under the pension plan of Dominion Textile Inc. pursuant to the purchase by T.A.G. Apparel Group Inc. of the Penmans division of Dominion Textile Inc. (the "Predecessor Employer") as contemplated by subsection 80(2) of the Act.

ii) On January 1, 1982, the Pension Plan for Hourly Paid Employees of the Penmans Division of Dominion Textiles Inc. (the "Penmans Plan") was established. On January 1, 1986 the Penmans Plan was merged with the Pension Plan for Designated Hourly-Paid Employees of Dominion Textiles and certain subsidiaries (the "Predecessor Plan").

iii) The text of the Pension Plan defines "Continuous Service" and "Pensionable Service" to include service with the Predecessor Employer and under the Predecessor Plan. The agreement of purchase and sale states that assets and liabilities were to be transferred from the Predecessor Plan to the Pension Plan to provide for the pension benefits earned by the hourly paid staff of Penmans prior to October 28, 1987 (the date of purchase and sale).

iv) The transfer of assets was not completed prior to the date of bankruptcy because the Régie des Rentes du Québec had not yet approved the transfer of assets from the Predecessor Employer's pension plan.

v) It is not clear that subsection 80(2) of the Act requires a transfer of assets in order for the pension plan of a successor employer to be deemed to be a continuation of a predecessor employer's pension plan.

vi) The Commission is satisfied that the Pension Plan was established pursuant to an arms length transaction.

vii) The Administrator has advised the Commission that the Predecessor Employer has agreed to assume responsibility for the solvency liability for benefits accrued prior to October 28, 1987. Moreover, since the going concern liability exceeded the solvency liability at October 28, 1987, the Predecessor Employer has also agreed to pay an amount, equal to the difference between the two valuations, to the Pension Plan. The Administrator has advised the Commission that these actions by the Predecessor Employer will result in the Pension Plan being in the same funded position as if the asset transfer had been completed.

(c) The preliminary wind up calculations provided by the Administrator indicate that the funded ratio of the Pension Plan is approximately 71% as at the date of wind up.

(d) The Administrator has advised that there are no assets available in the estate for distribution to preferred and ordinary secured creditors and, therefore, any claim for the shortfall in the Pension Plan asserted against the estate pursuant to section 75 of the Act would have no value.

Draft Consent Form to Expedite Filing of Commission Consent for Surplus Distribution Under ss. 8(2) of the Regulation With the Court

Employers applying for consent to the payment of surplus out of a pension plan pursuant to subsection 8(2) of the Regulation (and s.7a(2)(c) of the Regulation as it read immediately before December 18, 1991) are encouraged to attach a draft consent to their application. This will expedite the filing of consents with the court for those cases which are approved by the Commission.

The preamble portion to the draft consent should accurately reflect how the applicant has met the requirements of the Act and regulations. If the Commission finds that the draft consent form needs revision, it may request the applicant to make such revisions. The suggested format for a draft consent is shown below.

IN THE MATTER OF AN APPLICATION BY
(insert the name of the company making the application),
FOR THE CONSENT OF THE PENSION COMMISSION OF ONTARIO
TO THE PAYMENT OF SURPLUS FROM THE
(insert the name of the pension plan),
REGISTRATION NUMBER (insert "C" number),
(insert the name of the company making the application)

) *(date signed by Chair)*
) *(to be inserted by Chair)*

C O N S E N T

THIS APPLICATION made by *(insert the name of the company making the application)* for the consent of the Pension Commission of Ontario (the "Commission") to the payment of surplus from the *(insert the name of the pension plan)*, Registration Number *(insert "C" number)* (the "Pension Plan"), was considered by the Commission at 250 Yonge Street, Toronto, Ontario on *(insert the date of the Commission meeting at which the application will be considered)*;

UPON being satisfied that proper notice of the application for surplus payment had been given pursuant to subsection 78(2) of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");

AND UPON reviewing the Wind Up Report (as at *(insert the effective date)*) dated *(insert date)* prepared by *(insert the name of the company that prepared the report)*, *[include the following if a supplemental report has been filed, "and the Wind Up Report (as at (insert the effective date)) dated (insert date) prepared by (insert the name of the company that prepared the report),"]* and all other material filed in support of the application;

AND UPON considering the responses received from participants of the Pension Plan;

THE COMMISSION HEREBY CONSENTS pursuant to subsection 78(1) of the Act and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to *(insert the name of the company making the application)* from the *(insert the name of the pension plan)* in the amount of \$(*insert the amount of the refund requested*) as at *(insert the effective date of the last filed report)* plus investment earnings thereon to the date of payment (estimated to be \$(*insert estimated refund amount*) as at *(insert effective date of the estimate)*).

THE COMMISSION will file its consent with the Court pursuant to subsection 8(2) of the Regulation.

Eileen E. Gillese, Chair
Pension Commission of Ontario



INDEX NO.: XDEC-20

PLAN: United Dominion Industries Limited
C-4170

DATE OF DECISION: ss. 78(1) and 79(3) of the PBA and c. 8(1)(b) of Regulation 909,
as amended by O. Reg. 743/91

PUBLISHED BBS: July 25, 1994

PUBLISHED BULLETIN: Summer 1994 Bulletin 5/2, p.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P. 8

AND IN THE MATTER OF an application by United Dominion Industries Limited for distribution of surplus out of the Retirement Income Plan of United Dominion Industries Limited pursuant to sections 78 and 79(3) of the Pension Benefits Act and Section 8(1)(b) of Regulation 909, as amended by Regulation 743/91

BETWEEN:

United Dominion Industries Limited - Applicant

and

The Sun Life Assurance Company of Canada
and the individual Respondents Named in Schedule "A"
attached hereto - Respondents

Heard: October 28, 1993 and November 25, 1993
Toronto, Ontario

Heard by: M.J. Regan, Chair
E.E. Gillese, Vice Chair
M.D. Brown
K. Bush
D. Collins
R. Nickerson

Counsel for the Applicant:
I. McSweeney
D. McFarlane

Counsel for the United Steelworkers union group of employees:
D. Campbell

Counsel for the Goss and Management Groups of employees:

B. Lawrie

B. Worndl

REASONS FOR DECISION

Conclusion

On November 25, 1993, the Pension Commission of Ontario ("the Commission") orally consented to the payment of surplus to the Applicant, United Dominion Industries Limited ("the Applicant") in the amount of \$27,300,000 as at July 31, 1993, plus investment earnings thereon to the date of payment, from Retirement Income Plan of United Dominion Industries Limited, PCO Registration No. C-4170 ("the Plan"). The consent was not to be effective until the administrator satisfied the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and other persons were entitled had been paid, purchased or otherwise provided for to the satisfaction of the Commission.

After giving its consent, the Commission advised all parties that written reasons for decision would be forthcoming. These are the promised reasons for decision.

Nature of the Application

The application was brought pursuant to sections 78(1) and 79(3) of the Pension Benefits Act ("the Act") and section 8(1)(b) of Regulation 909, as amended by Regulation 743/91 ("Regulation 909").

It was made pursuant to a surplus sharing agreement under the terms of which 38.5% of the surplus, amounting to \$17,100,000, would be returned to certain members, former members and other persons and 61.5% of the surplus, amounting to \$27,300,000 was to be returned to the Applicant. A portion of the surplus being returned to the Applicant, in the amount of \$2,500,000, was to be distributed to members of two salaried pension plans registered in Manitoba and Quebec for employees in those provinces who were formerly members of the Plan.

It was the uncontroverted evidence of the Plan actuary that the contributions made by the Applicant formed no part of the surplus sought by the Applicant.

Consents

There was separate legal representation for Plan members and former members. Brian Shell consented in his capacity as legal counsel for the United Steelworkers of America on behalf of the Steelworkers Union and the inactive members of the Plan who were also members of the Steelworkers Union. Dona Campbell of the law firm Sack Goldblatt Mitchell acted on behalf of 152 inactive Plan members who provided written consents to the Commission staff and who were also members of the Steelworkers Union. Barbara Lawrie of the law firm Aird & Berlis represented two employee groups representing 1,251 active and inactive Plan members who also provided written consents.

All counsel indicated their consent to the arrangement on behalf of their client groups as did the United Steelworkers of America, through Mr. Leo Gerard, National Director of the United Steelworkers of America.

87.2% of active Plan members consented to the surplus sharing arrangement. Of the inactive Plan members, 80% provided consent and another 4% indicated their support but could not be counted for the purposes of a consent because of a defect in the consent form as, for example, where there was an absence of a witness to the signature. The breakdown of consents with the inactive group was: 22% of deferreds; 64.6% of pensioners; and, 82.5% of annuitants.

In considering the matter of consents, it is relevant to note that approximately 2% of the Plan population opposed the surplus sharing arrangements. It is also important to note that 5% of inactive Plan members had died pending resolution of the surplus matter since the first ongoing Plan withdrawal proposal was made in October of 1991. 63% of inactive Plan members were over the age of 70. 22% of inactive Plan members were over the age of 80.

History of the Application

The application was first considered by the Commission at its meeting of Oct. 28, 1993. The task of the Commission was clear: to determine whether the Applicant had met the requirements in both subs. 8(1) of regulation 909 and in subs. 79(3) of the Act.

Subsection 8(1) Requirements

The requirements of clause 8(1)(b) of Regulation 909, as interpreted by the Commission, are that surplus cannot be paid out to an employer except in accordance with the written consent of the collective bargaining agent, or if there is no such agent, at least two-thirds of the active Plan members, plus the consent of at least two-thirds of the former and other members.

It was clear that the Applicant more than met the consent requirements of subs. 8(1).

Subsection 79(3) Requirements

Two matters were discussed in relation to the requirements of subs. 79(3). First, benefits had not been paid out as required by clause 79(3)(c). However, the Commission was satisfied, based on the Applicant's assurances, that all such benefits would be paid and, in any event, the matter could be resolved by making such benefit payments a condition of Commission consent.

The second matter, however, was not so easily disposed of. At issue was whether the Applicant had satisfied clause 79(3)(b) of the Act ("the Clause") which requires that "...the pension plan provides for payment of surplus to the employer on the wind up of the pension plan".

After deliberations at its October meeting, the Commission -- through the Registrar -- wrote to all parties in a letter dated November 3, 1993, requesting additional submission on this issue. The relevant portion of that letter is set out now.

"The Commission requires written submissions as to the relationship between subsection 79(3)(b) of the Pension Benefits Act, R.S.O. 1990, c. P.8 and clause 8(1)(b) of Regulation 909, R.R.O. 1990 as amended by Ontario Regulation 743/91. In particular, your submissions are to address how the Commission can properly fulfil its role as a fiduciary in considering subsection 79(3)(b) in the face of the need for less than 100% consent pursuant to clause 8(1)(b)."

The Applicant satisfied all other requirements of the subs. 79(3) and Commission policies in respect of such application.

The Issue

The Applicant asked that the Commission find that the requirements of the Clause had been met by virtue of Article 18.06 of the Plan. Article 18.06 specifically provides for payment of surplus pension plan assets to the Applicant following the satisfaction of all Plan liabilities. The relevant portion of Article 18.06 is:

Surplus upon Termination

If there are any remaining assets after the liabilities for all benefits of this Plan accrued to date of termination for all those eligible for benefits under the Plan have been provided for, they shall be returned to the Company subject to any conditions or any approval procedures under the applicable Pension Laws and Revenue Rules.

In the past, when surplus applications were made pursuant to the terms of s. 7a of the old Regulations to the Act, the Commission refused to accept that its function in respect of the Clause was satisfied if the most current plan documentation provided for surplus reversion to an Employer. Rather, we held that we could only properly fulfil our statutory duties by determining surplus entitlement after a complete examination of all plan documentation.

The Commission continues to reject the idea that its role is properly fulfilled by reference only to current plan documentation. As we said in our decision of September 21, 1993 relating to the application of Western Star Trucks Inc. :

“...the Commission’s role in respect of surplus withdrawal applications is that of a fiduciary. The Commission must independently determine whether the Applicant has satisfied all of the requirements of the legislation... The passage of s. 8 of the Regulations cannot change the requirements of the Act. Subsection 79(3) is still in place. Therefore the Commission must still ensure that clause 79(3)(b) has been met and that the provisions in the Plan providing for surplus reversion to the applicant are valid.”

How, then, is the approach of the Commission different when dealing with applications under Regulation 909? As we said in the Western Star decision referred to above, the degree of scrutiny that the Commission will apply to plan documentation when determining if the requirements of the Clause have been met will vary from case to case. In this case, members and former members had separate legal representation, the requisite number of consents have been obtained as required by clause 8(1)(b) and all other legislative and policy requirements have been met. As well, the Commission was keenly aware of the other relevant facts, set out above in the section entitled “Consents”, which relate to the size of the population opposing the application and surplus sharing agreement, the percentage of Plan members that had died pending resolution of the application and the age distribution of the remaining inactive Plan members. In light of all these factors, the Commission did not scrutinize the plan documentation as stringently as it would have under the old regulation nor, indeed, as it would absent one or more of those facts.

The Commission found that the requirements of the Clause had been met. It was for these reasons that we consented to the application.

Dated this 24th day of March, 1994 at Toronto, Ontario

M.J. Regan
E.E. Gillese
M.D. Brown

K. Bush
D. Collins
R. Nickerson

Orders for **forms and publications** will be processed and hard copies distributed from the Ministry of Finance in Oshawa **on and after September 15, 1994**. To place an order for forms and publications **only** call 1-800-263-7965 (English enquiries) or 1-800-668-5821 (French enquiries) or TDD# 1-800-263-7776.

Enquiries pertaining to the completion of the forms should be directed to the pension officer or assistant at the PCO. For more information, please refer to the article following this section.

Contacts for PCO Enquiries

Actuarial Services	Anna Montenegro	314-0559
Annual Information Return Filing Fee	George Ha	314-0676
Communications - Publications and BBS	Judith Chalmers	314-0699
Issues & Correspondence, also FOIPOP Requests* & Media Enquiries	Margaret Dougherty	314-0697
General Enquiries		314-0660
Mailing List Update	Linda Stangl	314-0694
Policy Issues	Susan Ellis	314-0703
	Cynthia James	314-0702
(Bilingual)	Jules Huot	314-0613
PBGF Assessment	George Ha	314-0676
Registrar	Mary Crocker	314-0624

* Written Freedom of Information and Protection of Privacy (FOIPOP) requests should be mailed to Ron Ward, Assistant Co-ordinator, Information and Privacy Office, Ministry of Finance, 4th floor, 1075 Bay Street, Toronto ON M5S 2B1 call (416) 325-8369 or fax (416) 325-8252.

Contacts for Plan-related Enquiries

1. Sector Allocations - (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining Construction, Finance...	Rosemine Jiwa-Jutha	314-0611	Larry Falconer	314-0610
Trade, Commercial, Public Administration	Larry Falconer	314-0610	Rosemine Jiwa-Jutha	314-0611
Food, Beverages, Textiles, Paper...	Jaan Pringi	314-0586	Larry Martello	314-0587
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Jaan Pringi	314-0586

Printing, Primary Metals, Machinery...	Larry Murray	314-0644	David Kearney	314-0590
Electrical, Non-Metallic, Chemicals...	David Kearney	314-0590	Larry Murray	314-0644

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A-BRI	David Allan	314-0612	Elizabeth Carter	314-0604
BRO-COM	Steve Young	314-0646	Mark Henry	314-0584
CON-EZZ	Alain Malaket	314-0609	John Graham	314-0647
F-HAZ	Mark Henry	314-0584	Steve Young	314-0646
HEA-KMZ	William Qualtrough	314-0641	Sandy Malloy	314-0636
KNA-MPQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR-PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL-SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI-TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR - *	John Graham	314-0647	Alain Malaket	314-0609

*Companies with alpha-numeric names.

3. Alpha Allocations - Defined Contribution Plans

Alpha Range	Pension Analyst		Alternate	
A-Canada	Doug Kaye	314-0605	John Staric	314-0596
Canadian-COK	Margaret Fennell	314-0600	Claude De Souza	314-0608
COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM-FLO	John Staric	314-0596	Debra Bain	314-0640
FLU-HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM-JAL	Merle Corbie	314-0637	Lynn Barron	314-0639
JAM-MIL	Debra Bain	314-0640	John Staric	314-0596
MIN-ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU-RAL	Lynn Barron	314-0639	Merle Corbie	314-0637
RAM-SHA	John Staric	314-0596	Debra Bain	314-0640
SHE-THA	Merle Corbie	314-0637	Lynn Barron	314-0639
THE-VUL	Lynn Barron	314-0639	Merle Corbie	314-0637
VUM - *	John Staric	314-0596	Debra Bain	314-0640

4. Alpha Allocations - Pension Plans of Insolvent Companies

Alpha Range	Co-ordinator	
A-E	Jai Persaud	314-0595
F-S	Robin Gray	314-0593
T-#s*	Jai Persaud	314-0595

*Companies with alpha-numeric names.

The PCO Introduces One Call Shopping for all Your Forms and Publications Needs

Effective on Thursday, September 15, 1994 the Client Services and Public Relations Branch of the Ministry of Finance in Oshawa will be processing your orders for hard copies of all PCO forms* and publications.

The PCO will continue to accept requests for forms and publications only **until Wednesday, September 14, 1994.**

And here are three easy steps to follow for obtaining forms and publications:

Step 1

Make a phone call on or after Thursday, September 15, 1994:

- English speaking callers dial 1-800-263-7965
- French speaking callers dial 1-800-668-5821
- TDD 1-800-263-7776

(There are no long distance charges when calling from any location in Ontario!)

Step 2

Speak with one of the helpful and experienced program information officers and tell them the items you require. The officers can assist you with orders for hard copies of forms and publications only. Any enquiries concerning the completion of forms should be directed to the appropriate pension officer or assistant at the PCO.

Please refer to the list below. The officer will transmit your request to the distribution centre where all PCO forms and publications are stocked. Some publications are out-of-print and their status is noted below. It is not possible to fax forms to clients.

Step 3

Carry on your business. Within a few days your request will arrive by mail!

* * *

- * The only exception is prescribed Form 2, the Annual Information Return (AIR) and Schedules A, B and C which the PCO pre-prints and mails to Administrators within sixty days after the pension plan's year end. Enquiries should be directed to George Ha at (416) 314-0676.

Forms and Publications Listing, July 1994

I FORMS

Re: Application for Registration of a Pension Plan

Package of materials consists of:

- prescribed Form 1 in English and French
- a guide to preparing an application for registration of a pension plan (published in the *PCO Bulletin*, Spring 1994 issue, page 12)
- Application for Registration Fees Schedule (English only)

Re: Application for Registration of a Pension Plan Amendment

Package of materials consists of:

- prescribed Form 1.1 in English and French
- a guide to preparing an application for registration of a pension plan amendment (published in the *PCO Bulletin*, Spring 1994 issue, page 23)

Re: Spousal Waivers

Form 3 - Spousal Waiver of Joint and Survivor Pension - English and French

Form 4 - Spousal Waiver of Pre-retirement Death Benefit - English and French (English version published in the Spring, 1994 issue of the *PCO Bulletin* (page 34 - 36); French version published in the Summer, 1994 issue of the *PCO Bulletin*)

Re: Wind Up of Defined Benefit and Defined Contribution Pension Plans

Superintendent's Checklist for Compliance on Plan Wind Up - Defined Benefit Plans - English only

Superintendent's Checklist for Compliance on Plan Wind Up - Defined Contribution Plans - English only

Re: Statement of Investment Policies and Goals

Investment Policy Return (Form) - English and French (the English version of the IPR was published in the Spring, 1994 issue of the *PCO Bulletin* (page 37); the French version was published in the Summer, 1994 issue of the *PCO Bulletin*)

II BROCHURES

A *When your Pension Plan Winds Up: What it Means to Members*

Lorsque votre régime de retraite est liquidé: ce que cela signifie pour les participants

B *Understanding your Pension Plan: A Guide for Members of Employer Sponsored Pension Plans*

Comprendre votre régime de retraite guide destiné aux participants à des régimes de retraites organisés par l'employeur

III Compliance Assistance Guidelines: Status of CAGs and Disposition of Forms

In the Spring 1994 issue of the *PCO Bulletin*, we announced the discontinuation of *Compliance Assistance Guidelines*. The following explains the status of CAGs (several continue to be effective), replacement policies, where applicable and the disposition of forms.

Compliance Assistance Guideline No. 1: A Guide to Preparing An Application For Registration of a Pension Plan

- CAG not available, effective until May 1, 1994 only
- BBS reference for CAG #1: R500-200
- **replaced by administrative policy R500-201** which was published in the Spring 1994 issue of the *PCO Bulletin* and is available on the BBS. It is titled "preparation of an application for registration of a pension plan" (includes Form 1 in English and French and a Fees Schedule)

Compliance Assistance Guideline No. 2: A Guide to Preparing an Annual Information Return

- CAG not available
- Form 2 (and Schedules) is pre-printed by the PCO and mailed to the administrator within sixty days of the year end of the pension plan

Compliance Assistance Guideline No. 3: A Guide to Preparing, Reviewing and Amending a Statement of Investment Policies and Goals

- CAG effective and available
- CAG references sections according to the PBA, 1987 and Reg. 708
- BBS reference for CAG #3: S700-100
- the Superintendent's form - Investment Policy Return (IPR) was **replaced by updated IPRs at policy S700-125** (in English and French) and is available on the BBS

Compliance Assistance Guideline No. 4: A Guide to the Wind Up of a Pension Plan

- CAG effective and available
- CAG references sections according to the PBA, 1987 and Reg. 708
- BBS reference for CAG #4: W100-100

Compliance Assistance Guideline No. 5: A Guide to Completing a Pension Plan Document Checklist, effective November 1, 1992

- CAG not available, not effective on and after May 1, 1994
- BBS reference for CAG #5: R500-250
- **replaced by administrative policy R500-251** which was published in the Spring 1994 issue of the *PCO Bulletin* and is available on the BBS. It is titled "preparation of an application for registration of a plan amendment" (includes Form 1.1 in English and French)

IV The PCO Bulletin

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THE PENSION COMMISSION OF ONTARIO BULLETIN

Fall 1994



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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

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Ontario Changes Regulation 909

Changes were made on Friday, October 28, 1994 to Ontario regulations under the *Pension Benefits Act* (PBA) to resolve conflicts with the *Income Tax Act* (Canada) (ITA). Conflicts between the statutes arose as a result of earlier changes made to the ITA. Ontario rules govern pension plans whereas the ITA governs the tax treatment of money contributed to pension plans. Plans registered in Ontario must comply with the requirements of both statutes.

Most other jurisdictions have already made similar changes to provincial pension rules. In Ontario, most registered pension plans and members will not be affected by these new regulations. Certain changes will apply only to pension plans for highly paid employees whose pension benefits exceed federal ITA limits.

The changes deal with five areas:

- 1) **Employers who sponsor defined contribution pension plans that have been converted from defined benefit plans and have a surplus, will no longer be required to make contributions to these plans while the surplus exists.**

Previously under PBA rules, the employer had to continue making contributions to the pension plan whether or not a surplus existed. This conflicted with federal ITA rules which say that employers are not permitted to make contributions to these pension plans where a surplus exists.

- 2) **On-going pension plans which pay surplus to members where surplus is also being paid to the employer, may now make payments in the form of a benefit enhancement, cash or a combination of the two.**

Previously the PBA provided that payments to members from surplus could be made only by improving members' benefits. Where these enhanced benefits exceeded the ITA allowable limits for benefits, no surplus could be shared with plan members.

- 3) **Pension plans which offer plan benefits or require contributions which are in excess of the maximum limits permitted in the ITA, will be permitted to reduce excess accrued benefits or**

refund excess contributions to comply with the ITA in order to avoid the revocation of plan's registration by Revenue Canada.

Previously, the PBA did not permit a reduction in excess accrued benefits or a refund of excess contributions even in cases where failure to do so could have led to the revocation of the registration of the plan by Revenue Canada.

- 4) **The PBA will not apply to pension plans which only provide benefits or only permit contributions in excess of ITA limits, and other special retirement arrangements. Special arrangements called Retirement Compensation Arrangements which are not eligible for tax assistance will also be exempted from the application of the PBA.**

Previously, there was some uncertainty about whether the PBA applied to such plans and arrangements. Since such plans are not eligible for tax assistance under the ITA, they would have been very expensive to fund and difficult to administer if they were required to comply with the PBA.

- 5) **The Life Income Fund (LIF) formula for calculating the minimum amount that must be withdrawn each year is prescribed in the PBA but has been changed. It will be based instead on the minimum formula in the ITA.**

Explanatory Notes on the Content of O. Reg. 665/94

This version has been revised slightly in response to queries received after its original publication on October 31, 1994. The affected part is "Funding for plans with surplus: plan conversions/contribution holidays".

The purpose of O. Reg. 665/94 is to resolve conflicts between the requirements of the *Pension Benefits Act* (the PBA) and the federal *Income Tax Act* (the ITA) which have created difficulties for pension plan administrators.

Ontario's minimum requirements are in place to ensure that plan members receive the pension and other benefits they are entitled to under the terms of a pension plan. The funding requirements under Regulation 909 also ensure, to the extent possible, that pension plans have sufficient assets to pay accrued

benefits. However, the ITA restricts the level of tax assistance provided for retirement savings by limiting pension plan benefits and contributions. One of the objectives of Finance Canada is to reduce instances where individuals or companies benefit from excessive tax deferrals. Several areas of conflicts and consequences arose as a result of changes made to the ITA and the regulations which came into effect on January 1, 1992:

- 1) funding for plans with surplus: plan conversions/contribution holidays;
 - 2) surplus distribution to plan members from a continuing pension plan;
 - 3) reduction of accrued benefits and/or refund of contributions which are excess under the ITA;
 - 4) treatment of supplementary pension arrangements (including RCAs); and
 - 5) Life Income Fund: annual minimum withdrawal formula.
- 1) Funding for plans with surplus: plan conversions/contribution holidays

Section 9 of Regulation 909 is amended to revoke the requirement that an employer may not take a contribution holiday even if the plan permits unless, surplus equal to two years' of current service costs is retained in the plan.

This requirement applied where a defined benefit plan was converted to a defined contribution plan and surplus emerged. The two-year surplus hold-back was introduced in 1988 as a means of funding proposed mandatory indexation of benefits. Employers were required to continue funding regardless of surplus. Conflicts arose because the ITA will not permit employer funding until all surplus, which results from a conversion, is depleted.

The amendment also eliminates the words "has no going concern unfunded liability or solvency deficiency. Section 9 now requires a determination of "surplus" **after** conversion for the purpose of determining whether a contribution holiday may be taken. The defined term "normal cost" replaces the undefined term "current service cost". "Normal cost" is defined under section 1 of Regulation 909. Effective October 28, 1994, an employer who sponsors a converted pension plan may use the entire amount of

surplus to take contribution holidays, provided that the plan documents do not prohibit contribution holidays.

It is noteworthy that the amendment to section 9 of the Reg. does not affect section 9 of the administrative practice on plan conversion (policy # C200-100). Where applicable, employers will continue to be required to satisfy the funding conditions under section 9 of the administrative practice.

2) Surplus distribution to plan members from a continuing pension plan

Subsections 10(6) and (7) of the Regulation are revoked.

Section 10 identifies the conditions which must be met before the Commission may consent to a payment of surplus from a continuing pension plan to an employer. Subsections 10(6) and (7) limit any cash payment of surplus to the members and former members to situations where the Commission consents under section 63 of the PBA to a refund of required contributions. Because not all plans require member contributions and because the ITA prescribes maximum limits for members' benefits, some plans which have already improved the benefits of high earning members to the maximum are prohibited from distributing surplus in any form as long as the plan is ongoing.

In situations where a portion of the surplus will be paid to the employer, the PBA change permits surplus to be paid from a continuing plan to members and former members in the form of a benefit enhancement, cash or a combination of the two. The acceptable methods of distributing surplus to members and former members in a continuing plan are now consistent with the methods permitted on plan termination.

3) Reduction of excess accrued benefits and/or refund of excess contributions

Subsections 47(11) to (16) provide exemptions for certain amendments which are filed with the Superintendent only for the purpose of compliance with the ITA in order to avoid the revocation of the registration of a pension plan by Revenue Canada.

These subsections allow exemptions to prohibitions under the PBA against amendments that provide for a reduction of accrued benefits or that provide for the

refund of contributions without the consent of the Commission. The exemptions are applicable only where notice of the amendment, and evidence that a benefit reduction or refund of contributions is necessary in order to avoid revocation of registration, is provided to the Superintendent within a prescribed 60-day period.

Subsections 47(11) and (12) allow an exemption to the void amendment provision under subsection 14(1) of the PBA. Subsections 47(13) and (14) allow an exemption to the member contribution refund requirements of subsection 63(1) of the Act. An exemption from the requirement to obtain the Commission's consent to a refund of payment to an employer is provided under subsections 47(15) and (16).

An administrative practice, concerning what constitutes acceptable evidence that a reduction of benefits or a refund of contributions is necessary in order to avoid revocation of registration by Revenue Canada, will be prepared. Exemptions under section 47 will apply only if the Superintendent is satisfied that the evidence provided supports the position that a reduction or refund is necessary.

4) Treatment of supplementary pension arrangements (including RCAs)

Subsection 47(3) of the Regulation is amended to exclude Retirement Compensation Arrangements (RCAs), as defined in the ITA, and pension plans which only provide benefits or require contributions in excess of the prescribed ITA maximums from the application of the PBA and regulations.

An RCA is not a registered pension plan (an RPP), as defined in the ITA. However, for the purposes of the PBA, an RCA might satisfy the definition of a pension plan. If Revenue Canada revokes the registration of a RPP, it is deemed to be an RCA even though it may continue to meet the PBA definition of a pension plan.

Contributions made to supplementary pension arrangements do not receive tax-assisted treatment under the ITA and the investment income is subject to taxation. If plan sponsors sought to register these arrangements under the PBA, compliance with the PBA would present severe funding and administrative difficulties.

5) Life Income Fund: annual minimum withdrawal formula

Section 5 of Schedule 1 to Regulation 909 is amended to harmonize the formula for the annual minimum amount which must be withdrawn from a life income fund (a LIF) with the requirements of the ITA for the annual minimum amount which must be withdrawn from a registered retirement income plan (a RRIF).

The current formula under subsection 5(2) reflects the wording of the ITA prior to the 1992 amendment. Subsection 5(4) is revoked to eliminate reference to the minimum withdrawal requirement that is now adequately addressed under subsection 5(2). The substituted subsection 5(4) addresses the adjustment of the annual maximum withdrawal amount in the initial fiscal year of a LIF.

Regulations

On October 28, 1994 O. Reg. 665/94 was filed, amending Regulation 909/90. The authoritative version in English and French will be published in the November 12, 1994 Ontario Gazette.

REGULATION TO AMEND REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

Note: Since January 1, 1994, Regulation 909 has been amended by Ontario Regulations 142/94, 408/94, 409/94 and 558/94. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1993.

1. **Section 9 of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:**
 9. If an amendment to a pension plan with defined benefits converts the defined benefits to defined contribution benefits, the employer may offset the employer's contributions for normal costs against the amount of surplus, if any, in the pension fund after the conversion.
 2. **Subsections 10 (6) and (7) of the Regulation are revoked.**
 3. **(1) Section 47 of the Regulation is amended by adding the following subsections:**
 - (11) Subject to subsection (12), subsection 14 (1) of the Act does not apply to a pension plan with respect to an amendment that is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
 - (12) Subsection (11) does not apply with respect to an amendment unless, at least 60 days before the amendment is effective, the administrator of the pension plan gives the Superintendent notice of the amendment together with evidence that the amendment is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
 - (13) Subject to subsection (14), subsection 63 (1) of the Act does not apply to a refund of contributions to a member or former member of a pension plan if the refund is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
 - (14) Subsection (13) does not apply with respect to a refund unless, at least 60 days before the refund is made, the administrator of the pension plan gives the Superintendent notice of the refund together with evidence that the refund is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
 - (15) Subject to subsection (16), subsection 78 (1) of the Act does not apply to a pension fund with respect to a payment of money to an employer if the payment is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
 - (16) Subsection (15) does not apply with respect to a payment unless, at least 60 days before the payment is made, the administrator of the pension plan gives the Superintendent notice of the payment together with evidence that the payment is required to avoid revocation of registration of the pension plan under the *Income Tax Act* (Canada).
- 2) **Subsection 47 (3) of the Regulation is amended by adding the following paragraphs:**
 5. A retirement compensation arrangement as defined in subsection 248 (1) of the *Income Tax Act* (Canada).
 6. A plan that provides only benefits that exceed the maximum benefit limits applicable to a pension plan that is registered under the *Income Tax Act* (Canada).
 7. A plan that permits only contributions that are in excess of the maximum contribution limit applicable to a pension plan that is registered under the *Income Tax Act* (Canada).

4. (1) Subsection 5 (2) of Schedule 1 of the Regulation is revoked and the following substituted:

(2) The amount of income paid out of the life income fund during a fiscal year must not be less than the minimum amount prescribed for registered retirement income funds under the *Income Tax Act* (Canada).

(2) Subsection 5 (4) of Schedule 1 of the Regulation is revoked and the following substituted:

(4) For the initial fiscal year of the fund, the "maximum" in subsection (1) shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month.

**RÈGLEMENT MODIFIANT LE
RÈGLEMENT 909 DES RÈGLEMENTS REFONDUS
DE L'ONTARIO DE 1990
PRIS EN APPLICATION DE LA
LOI SUR LES RÉGIMES DE RETRAITE**

Remarque : Depuis le 1^{er} janvier 1994, le Règlement 909 a été modifié par les Règlements de l'Ontario 142/94, 408/94, 409/94, 558/94. Pour les modifications antérieures, voir la Table des règlements qui figure dans les Lois de l'Ontario de 1993.

1. L'article 9 du Règlement 909 des Règlements refondus de l'Ontario de 1990 est abrogé et remplacé par ce qui suit :

9. Si la modification d'un régime à prestations déterminées convertit les prestations déterminées en prestations à cotisation déterminée, l'employeur peut compenser ses cotisations au titre des coûts normaux par le montant de l'excédent éventuel du régime après la conversion.

2. Les paragraphes 10 (6) et (7) du Règlement sont abrogés.

3. (1) L'article 47 du Règlement est modifié par adjonction des paragraphes suivants :

(11) Sous réserve du paragraphe (12), le paragraphe 14 (1) de la Loi ne s'applique pas à un régime à l'égard d'une modification qui est nécessaire afin d'empêcher le retrait de l'agrément du régime aux termes de la *Loi de l'impôt sur le revenu* (Canada).

(12) Le paragraphe (11) ne s'applique pas à l'égard d'une modification sauf si, au moins 60 jours avant que la modification ne prenne effet, l'administrateur du régime donne au surintendant un avis de la modification avec une preuve de la nécessité d'apporter la modification afin d'empêcher le retrait de l'agrément du régime aux termes de la *Loi de l'impôt sur le revenu* (Canada).

(13) Sous réserve du paragraphe (14), le paragraphe 63 (1) de la Loi ne s'applique pas au remboursement de cotisations versées par un participant ou ancien participant à un régime si ce remboursement est nécessaire afin d'empêcher le retrait de l'agrément du régime aux termes de la *Loi de l'impôt sur le revenu* (Canada).

(14) Le paragraphe (13) ne s'applique pas à l'égard d'un remboursement sauf si, au moins 60 jours avant que le remboursement ne soit fait, l'administrateur du régime donne au surintendant un avis de remboursement avec une preuve de la nécessité de faire le remboursement afin d'empêcher le retrait de l'agrément du régime aux termes de la *Loi de l'impôt sur le revenu* (Canada).

(15) Sous réserve du paragraphe (16), le paragraphe 78 (1) de la Loi ne s'applique pas à une caisse de retraite à l'égard du paiement d'une somme à un employeur si ce paiement est nécessaire afin d'empêcher le retrait de l'agrément du régime aux termes de la *Loi de l'impôt sur le revenu* (Canada).

- (16) Le paragraphe (15) ne s'applique pas à l'égard d'un paiement sauf si, au moins 60 jours avant que le paiement ne soit fait, l'administrateur du régime donne au surintendant un avis du paiement avec une preuve de la nécessité de faire ce paiement afin d'empêcher le retrait de l'agrément du régime aux termes de la *Loi de l'impôt sur le revenu* (Canada).

(2) Le paragraphe 47 (3) du Règlement est modifié par adjonction des dispositions suivantes :

5. Une convention de retraite au sens du paragraphe 248 (1) de la *Loi de l'impôt sur le revenu* (Canada).
 6. Un régime qui n'offre que des prestations supérieures aux prestations maximales qui sont applicables à un régime agréé aux termes de la *Loi de l'impôt sur le revenu* (Canada).
 7. Un régime qui ne permet que des cotisations supérieures à la cotisation maximale applicable à un régime agréé aux termes de la *Loi de l'impôt sur le revenu* (Canada).
4. **(1) Le paragraphe 5 (2) de l'annexe 1 du Règlement est abrogé et remplacé par ce qui suit :**
- (2) Le montant du revenu prélevé sur le fonds de revenu viager au cours d'un exercice ne doit pas être inférieur au minimum prescrit aux termes de la *Loi de l'impôt sur le revenu* (Canada) pour les fonds enregistrés de revenu de retraite.
- (2) **Le paragraphe 5 (4) de l'annexe 1 du Règlement est abrogé et remplacé par ce qui suit :**
- (4) Pour l'exercice initial du fonds, le "maximum" prévu au paragraphe (1) est rajusté proportionnellement au nombre de mois compris dans cet exercice divisé par 12, toute partie d'un mois incomplet comptant pour un mois.

Explanatory Notes on the Content of O. Reg. 558/94

Ontario Regulation 558/94 which amends Regulation 909, R.R.O. 1990 was filed on August 23, 1994 and published in *The Ontario Gazette* dated September 10, 1994.

The objective of the amendment is to introduce minor housekeeping changes which will ensure that the terminology previously introduced by O. Reg. 409/94 regarding prescribed retirement savings arrangements is consistent throughout Regulation 909. A secondary objective is the amendment of three provisions in the French version of Regulation 909 which cross-reference incorrect section numbers.

Background - Prescribed Retirement Savings Arrangements

Prior to June 24, 1994, the effective date of O. Reg. 409/94, prescribed retirement savings arrangements provided for under clause 42(1)(b) of the *Pension Benefits Act* (the "Act") were identified in subsections 21(1) and (2) of the Regulation as a registered retirement savings plan (informally known as a "locked in" RRSP) and, in subsections 21(1) and (5) as a life income fund (a LIF). O. Reg. 409/94 replaced the term "registered retirement savings plan" with the term "locked-in retirement account" (a LIRA). The terms "RRIF" and "RRSP" were also prescribed in connection with the direct transfer of an excess amount from a registered pension plan to a regular (unlocked) tax-deferred vehicle.

The new amendment under O. Reg. 558/94 provides for the relocation of the definitions of the terms "life income fund", "locked-in retirement account", "RRIF" and "RRSP" from section 21 to section 1 of the Regulation. In addition, references in sections 21 and 22 of the Regulation and in Schedule 1 to "registered retirement savings arrangement", "prescribed retirement savings arrangement", "retirement savings arrangement", and "prescribed registered retirement savings arrangement" are replaced with references that are consistent with the terms now defined under section 1.

Regulation

On August 23, 1994, O. Reg. 558/94 was filed, amending Regulation 909/90. The authoritative version in English and French can be found in the September 10, 1994 issue of the Ontario Gazette.

REGULATION TO AMEND REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

Note: Since January 1, 1994, Regulation 909 has been amended by Ontario Regulations 142/94, 408/94 and 409/94. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1993.

1. Subsection 1 (1) of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by adding the following definitions:

"life income fund" means an RRIF that meets the requirements set out in Schedule 1; ("fonds de revenu viager")

"locked-in retirement account" means an RRSP that meets the requirements set out in subsection 21 (2); (compte de retraite avec immobilisation des fonds")

"RRIF" means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada); ("FERR")

"RRSP" means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada); ("REÉR")

2. (1) Clause 21 (2) (h) of the Regulation is amended by striking out "registered retirement savings arrangement" in the first and second lines and substituting "locked-in retirement account".

(2) Subsection 21 (3) of the Regulation is revoked and the following substituted:

(3) An immediate or deferred life annuity that is purchased with funds from a life income fund or locked-in retirement account shall not differentiate on the basis of the sex of the beneficiary where the fund or account resulted from the transfer of the commuted value of a pension benefit which value was determined in a manner that did not differentiate on the basis of sex.

(3) Subsection 21(4) of the Regulation is revoked and the following substituted:

(4) A life income fund or locked-in retirement account shall contain a statement as to whether the commuted value of the pension benefit transferred to it was determined on a basis that differentiated on the basis of sex.

(4) Subsection 21(5) of the Regulation is revoked.

3. Subsection 21.1 (2) of the Regulation is amended by striking out "a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada)" in the last three lines and substituting "an RRSP".

4. (1) Subsection 22 (1) of the Regulation is amended by striking out the portion preceding clause (a) and substituting the following:

(1) An insurance contract under which a deferred or immediate life annuity will be provided resulting from the transfer of the commuted value of a pension benefit or as the result of a purchase from a life income fund or locked-in retirement account shall set out that,

.

(2) Subclause 22 (1) (f) (ii) of the Regulation is amended by striking out "a prescribed registered retirement savings arrangement" in the second and third lines and substituting "a life income fund or locked-in retirement account".

5. The French version of subsection 29.1 (2) of the Regulation is amended by striking out "64" in the fourth line and substituting "68".

6. (1) The French version of clause 6(1) (b) of Schedule 1 to the Regulation is amended by striking out "19" and substituting "22".

(2) Clause 6 (1) (c) of Schedule 1 to the Regulation is revoked and the following substituted:

(c) before December 31 in the year in which the purchaser reaches 71 years of age, to a locked-in retirement account.

(3) The French version of subsection 7(1) of Schedule 1 to the Regulation is amended by striking out "19" in the fourth line and substituting "22".

RÈGLEMENT MODIFIANT LE RÈGLEMENT 909
DES RÈGLEMENTS REFONDUS
DE L'ONTARIO DE 1990
PRIS EN APPLICATION DE LA
LOI SUR LES RÉGIMES DE RETRAITE

Remarque: Depuis le 1er janvier 1994, le Règlement 909 a été modifié par les Règlements de l'Ontario 142/94, 408/94 et 409/94. Pour les modifications antérieures, voir la Table des règlements qui figure dans les Lois de l'Ontario de 1993.

1. Le paragraphe 1 (1) du Règlement 909 des Règlements refondus de l'Ontario de 1990 est modifié par adjonction des définitions suivantes :

"compte de retraite avec immobilisation des fonds" REÉR qui satisfait aux exigences énoncées au paragraphe 21 (2).
("locked-in retirement account")

"FERR" Fonds enregistré de revenu de retraite constitué conformément à la *Loi de l'impôt sur le revenu* (Canada). ("RRIF")

"fonds de revenu viager" FERR qui satisfait aux exigences énoncées à l'annexe 1. ("life income fund")

"REÉR" Régime enregistré d'épargne-retraite constitué conformément à la *Loi de l'impôt sur le revenu* (Canada). ("RRSP")

2. (1) L'alinéa 21 (2) h) du Règlement est modifié par substitution, à "arrangement d'épargne-retraite enregistré" aux première et deuxième lignes, de "compte de retraite avec immobilisation des fonds".

(2) Le paragraphe 21 (3) du Règlement est abrogé et remplacé par ce qui suit :

(3) Une rente viagère immédiate ou différée qui est constituée au moyen de fonds provenant d'un fonds de revenu viager ou d'un compte de retraite avec immobilisation des fonds ne doit pas établir de distinction fondée sur le sexe du bénéficiaire lorsque le fonds ou le compte découle du transfert de la valeur de rachat d'une prestation de retraite et que cette valeur a été déterminée d'une manière qui n'établit pas une telle distinction.

(3) Le paragraphe 21 (4) du Règlement est abrogé et remplacé par ce qui suit :

(4) Le fonds de revenu viager ou le compte de retraite avec immobilisation des fonds contient une déclaration précisant si la valeur de rachat de la prestation de retraite qui y est transférée a été déterminée d'une manière qui établit une distinction fondée sur le sexe.

(4) Le paragraphe 21 (5) du Règlement est abrogé.

3. Le paragraphe 21.1 (2) du Règlement est modifié par substitution, à "un régime enregistré d'épargne-retraite constitué conformément à la *Loi de l'impôt sur le revenu* (Canada)" aux deux dernières lignes, de "un REÉR".

4. (1) Le paragraphe 22 (1) du Règlement est modifié par substitution, au passage qui précède l'alinéa a), de ce qui suit :

(1) Le contrat d'assurance aux termes duquel une rente viagère immédiate ou différée sera offerte en raison du transfert de la valeur de rachat d'une prestation de retraite ou en raison de la constitution à partir d'un fonds de revenu viager ou d'un compte de retraite avec immobilisation des fonds stipule ce qui suit :

.....

(2) Le sous-alinéa 22 (1) f) (ii) du Règlement est modifié par substitution, à "d'un arrangement d'épargne-retraite enregistré prescrit" aux deuxième et troisième lignes, de "d'un fonds de revenu viager ou d'un compte de retraite avec immobilisation des fonds".

5. La version française du paragraphe 29.1 (2) du Règlement est modifiée par substitution, à "64" à la quatrième ligne, de "68".

6. (1) La version française de l'alinéa 6 (1) b) de l'annexe 1 du Règlement est modifiée par substitution, à "19", de "22".

(2) L'alinéa 6 (1) c) de l'annexe 1 du Règlement est abrogé et remplacé par ce qui suit :

(c) avant le 31 décembre de l'année au cours de laquelle il atteint l'âge de 71 ans, dans un compte de retraite avec immobilisation des fonds.

(3) La version française du paragraphe 7 (1) de l'annexe 1 du Règlement est modifiée par substitution, à "19" à la quatrième ligne, de "22".

Announcements

Callers to the PCO Greeted by Automated Voice System

On August 30 the Pension Commission of Ontario began to use an automated telephone voice system to provide an initial response to people calling the PCO's main phone line.

The automated voice system advises callers seeking information about their Canada Pension Plan, Old Age Security benefits, or issues related to the Ontario Public Service Pension Plan, about the agencies responsible for these matters and the phone numbers to call. Callers on PCO business can either wait briefly to speak with the receptionist, or refer to the PCO frequent contacts list and staff list at the back of this issue of the *PCO Bulletin*.

Stakeholders can obtain the best level of service in response to enquiries by direct dialing to PCO staff members. If the individual is not available, and to facilitate matters, callers can leave a detailed message on the PCO's voice-messaging system about the purpose of the call and a preferred time for the staff member to return the call.

New Member Appointed to the Commission

Shiraz Y. M. Bharmal was appointed on September 30, 1994 to the Pension Commission of Ontario for a three-year term. Since 1973, Mr. Bharmal has been a consulting actuary and Managing Principal of an international consulting firm. Mr. Bharmal has extensive experience in the areas of design, planning and financial management of pension plans, and has specialized in future financial planning using forecast techniques.

Mr. Bharmal is a Fellow of the Canadian Institute of Actuaries, the Institute of Actuaries, and the Chartered Insurance Institute in England. He is a frequent speaker on pension and executive benefit issues, and has published several articles on these subjects. Mr. Bharmal has been an active participant in the pension reform debate.

Life Income Funds (LIFs): Direct Transfers and Administration Issues

This is the third in a series of articles written to provide information related to the transfer of locked-in funds to an Ontario life income fund (a "LIF") and to the administration of a LIF. Information about the authority under the Income Tax Act (Canada), (the "ITA") to make a direct transfer to a LIF is provided in this article. In addition, recent amendments to the Pension Benefits Act and decisions which affect the administration of a LIF will be discussed.

Authority for Direct Transfers

Many Administrators of registered pension plans are uncertain about whether the ITA provides for the direct transfer of the "locked-in" value of a pension entitlement from a registered pension plan to a LIF. The authority for this type of transfer can be found under clauses 147.3(1)(c)(iii) [direct transfer from a defined contribution plan] and 147.3(4)(d)(iii) [direct transfer from a defined benefit plan] of the ITA. Confusion arises because the ITA provides for a transfer to a registered retirement income fund (a "RRIF"). There is no reference under the ITA to a life income fund (LIF).

A LIF is a "locked-in" tax-sheltered arrangement which is prescribed under Regulation 909 (the "Regulation") under the *Pension Benefits Act* (the "Act"). A LIF is defined under the Regulation, and the contractual conditions which are applicable to the administration of a LIF are set out in Schedule 1 to the Regulation. Since the Ontario LIF is established only under provincial pension legislation, it is not mentioned in the ITA. For the purposes of the ITA, a RRIF is the appropriate transfer arrangement. In other words, an Ontario LIF is actually a RRIF with some additional conditions which make it acceptable to receive funds locked-in under provincial law. Therefore, the specimen document(s) must comply both with the contractual requirements under the ITA for a RRIF and under the Regulation for a LIF.

It follows, that in order for a pension plan document to provide for a transfer to a tax-sheltered arrangement that is acceptable to both the federal and the provincial regulators, the transfer provision must contain references to both of the arrangements. For example, a portability provision that permits a transfer to "a RRIF" will reflect the language of the ITA but it will

not comply with Ontario's requirements. For Ontario's purposes, a portability option which permits a transfer to "a RRIF which meets the requirements for a LIF as set out in the Regulation under the *Pension Benefits Act*, as amended from time to time" will be acceptable. Before an Administrator files an amendment to alter the portability provisions for a pension plan registered under the Act, Revenue Canada's advice concerning the proposed wording should be sought.

Earliest Withdrawal Date

Amendment 409/94 to Regulation 909, which was effective June 24, 1994, altered the rule affecting the earliest date withdrawals (annual minimum or maximum amounts) may commence from an Ontario LIF. Prior to June 24, subsection 4(1) of Schedule 1 restricted the date withdrawals could commence to the date the former plan member (the "annuitant") attained 55 years of age (10 years prior to the date that unreduced retirement benefits are normally payable under the CPP or the QPP, as applicable).

Effective June 24, 1994, that restriction was altered to the earlier of the date the annuitant attains 55 years of age or the earliest date the annuitant could have commenced to receive retirement income under the terms of the plan from which the "locked-in" funds were originally transferred. Where money has been transferred from the pension plans of several employers, the earliest retirement date under any of the pension plans applies to the balance of the LIF.

Financial institutions should insure that the Administrator of a pension plan identifies the applicable earliest retirement date when the original locked-in transfers are made from a pension plan. In situations where that information was or is not provided, financial institutions should obtain confirmation of any earlier date before permitting withdrawals to commence prior to the annuitant's attainment of 55 years of age.

Application of the CANSIM Rate

The maximum amount which may be withdrawn from a LIF during any fiscal year of the LIF is restricted to an amount which must be calculated annually in accordance with formulae which are identified under Schedule 1 of the Regulation. There are two methods of determining the annual maximum payout from a LIF. Both are based, in part, on the use of prescribed rates of interest.

The annual maximum withdrawal amount which is applicable to any twelve-month fiscal year of the LIF must be determined as at January 1 (the valuation date) of that year. If the method selected by the financial institution is the CANSIM method, a rate not to exceed the CANSIM series B-14013 rate for December of the preceding year is the prescribed rate for the calculation on the first fifteen years of the LIF. The Canadian Socio-Economic Information Management (CANSIM) series is compiled by Statistics Canada and is published in the Bank of Canada Review. Series B-14013 is applicable to long-term bonds issued by the Government of Canada.

Information released in the *PCO Bulletin* previously indicated that an assumed January 1 valuation date was also applicable in the initial fiscal year of an Ontario LIF, even though that initial fiscal year might be less than twelve months. However, the wording of subsection 5(1) and clause 5(3)2.(ii) of Schedule 1 was recently reviewed in detail as part of an undertaking to establish greater consistency in the practices of all jurisdictions which offer similar LIF arrangements.

After careful consideration of those provisions and following consultation with Ministry staff, it was concluded that the wording of section 5 is broad enough to accommodate a change in the method of determining the annual maximum withdrawal amount in the first fiscal year of a LIF. This change will apply only where the first fiscal year of a LIF is less than twelve months (fiscal years must end on December 31 and may not exceed a twelve-month period).

Now, where the initial transfer of monies to an Ontario LIF occurs after January, the use of the CANSIM rate for the month preceding the month in which the monies are transferred to the LIF will be permitted. For example, if the initial transfer is received during the month of May, the April CANSIM rate may be used to calculate the annual maximum withdrawal amount for the initial eight-month fiscal year. Calculations performed in January of each subsequent year must be based on the prescribed December rate.

It is our hope that Schedule 1 will be amended soon to provide greater clarity concerning the requirements for the administration of an Ontario LIF, including more explicit direction about the calculations to determine annual maximum withdrawal amounts.

Minimum Withdrawal Requirement

The annual minimum withdrawal requirement for an Ontario LIF is now consistent with the minimum requirement under the ITA for withdrawals from a RRIF. The amendment to subsection 5(2) of Schedule 1 to Regulation 909 was part of Ontario Regulation 665/94 which was effective October 28, 1994. Please refer to page 6 of this issue for more information about O. Reg. 665/94.

Written Consent of A Spouse

Locked-in money (money which must be administered in accordance with the Act and Regulation 909) may not be transferred to a LIF unless the written consent of the spouse of the member or former member of a pension plan, as applicable, is obtained. Pension plan administrators and financial institutions are responsible for ensuring that transfers do not contravene this requirement.

The written consent of a spouse must be obtained because the amount of the legislated survivor benefits to which a spouse is entitled will be reduced as a result of withdrawals made from a LIF. Under circumstances where a member or former member dies before locked-in money is transferred to purchase a life annuity, a spouse who is not living separate and apart from the member is entitled to the death benefit. When a life annuity is purchased, if a spouse is not living separate and apart, a life annuity which provides a 60 per cent survivor benefit must be arranged. Spouses may waive the right to legislated survivor benefits by completing the prescribed form.

The requirement to obtain a spouses's written consent to a transfer to a LIF is being confused in some cases with a spouse's voluntary waiver of survivor benefits. By consenting to a transfer to a LIF, a spouse is not waiving his/her entitlement to survivor benefits.

The PCO is developing a suggested consent form which will assist spouses in understanding the consent requirement. Use of the suggested form will also help to ease the administrative burden on pension plan administrators and financial institutions. The suggested consent form will be published in an upcoming edition of the *PCO Bulletin*.

Previously published information on the LIF is available on the Bulletin Board System (the "BBS") under policy index number L050. Please refer to page BBS-2 of the December 1993 - January 1994 *PCO Bulletin*, volume 4, issue 2 for instructions about how to subscribe to the BBS.

Commuted Values: Computation and Interest Requirements on Transfer

Mandatory portability rights for individual pension plan members who are entitled to a deferred pension at termination of employment were introduced under the *Pension Benefits Act*, 1987. Due to the volatility of interest rates over recent months, some confusion has arisen concerning what computation date must be used as the basis for a commuted value calculation and what rate of interest must be credited until a transfer is completed.

In considering the matter of the computation date, some distinction should be made between commuted values determined for two separate purposes. The first is for the purpose of a calculation made with respect to a mandatory right, or any portability right available under a pension plan that is effective at an individual's date of termination. The second is for the purpose of a calculation made with respect to any portability right provided for under a pension plan which is effective after an individual's date of termination.

This article will explain the computation and interest requirements in relation to the first instance. These requirements are applicable where a terminated member is making an election within the prescribed period.

Prescribed Election Period

Section 42 of the Act stipulates that terminated members (individual members who terminate employment or who cease to be eligible for continued plan membership) who are not eligible to commence receiving payment of an immediate pension at date of termination, have the right to elect a portability option. That right is time-limited.

The maximum required period for making a transfer election under section 42 is prescribed under subsection 20(1) of the Regulation. In accordance with clause 41(1)(p), the election period must be identified in the termination statement. If an individual does not make an election within the prescribed period, the right to require the administrator to transfer the commuted value is extinguished (subsection 42(4) of the Act). In this case, the default option is a deferred pension payable from the pension plan.

Of course, in circumstances where an administrator fails to provide a written statement within the period prescribed under subsection 41(2) of the Regulation, a terminated member's election period cannot be shortened as a consequence of late notice. Accordingly, the appropriate period to make an election should commence at the date the statement is provided.

Computation Date

Subsection 19(1) of the Regulation identifies the method of determining a commuted value for the purposes of section 42 of the Act. The commuted value of a termination benefit may not be less than the value determined in accordance with the September 1, 1993 "Recommendations for the Computation of Minimum Transfer Values of Pension" (the "Recommendations") issued by the Canadian Institute of Actuaries.

Part C. of Section 2 of the "Recommendations", indicates that the transfer value should normally be computed as of the termination date (i.e, the date an individual terminates employment or the date an individual is no longer eligible for membership, as appropriate). Under circumstances where a pension plan provides section 42 entitlements for terminating members who are entitled to an immediate pension, the computation date will be determined as above. However, where a plan is amended to provide portability entitlements for deferred vested members who previously either had no statutory or plan rights, or did not make a transfer election within the prescribed period, the computation date will be the date the transfer value is determined.

Interest Accrual

Part C. of Section 2 of the "Recommendations" also permits an adjustment of the transfer value in accordance with Section 4. Section 4 permits an actuary to establish the period for which a transfer value applies before recomputation is required. For the purposes of the Act and the Regulation, Section 4 has no application during the initial prescribed period for making a transfer election.

In accordance with subsection 24(11.1) of the Regulation, where an election is made within the prescribed period, interest calculated at the same rate used to calculate the [initial] commuted value must accrue from the date of termination to the beginning

of the month of transfer. Where a plan administrator fails to provide a written termination statement within the prescribed period, no downward adjustment of the cumulative amount of commuted value plus interest is permitted. At the date the transfer is made from the pension plan, the amount transferred with respect to an individual should not be less than the commuted value computed as at the individual's date of termination, plus interest credited at the rate and over the period indicated above.

The Pension Plan Administrator: Handling of Plan Fund Expenses and Maintenance of Plan Records

This is the third in a series of articles designed to assist Administrators in understanding the role and responsibilities they have undertaken as Administrators of pension plans registered under the Act. This article will identify the duty of care the Administrator, as a person of ordinary prudence, owes to the beneficiaries of a pension plan in matters concerning the payment of charges from a plan fund and the maintenance of pension plan records.

Specific direction about the scope of most of the duties and responsibilities of an Administrator of a registered pension plan is provided in the *Pension Benefits Act* (the "Act") and/or the Regulation under the Act. However, the Administrator's responsibility for maintaining the records of a pension plan is not specifically addressed in either the Act or the Regulation. Nor is there any legislated or prescribed mechanism to assist the Administrator in determining what constitutes usual and reasonable administrative fees and expenses of a pension plan.

Previously the PCO has provided some direction on these matters. For example, questions concerning negotiating fees, finders' fees and insurance broker commissions as legitimate fees and expenses of a pension plan, have been addressed in the *PCO Bulletin*. Several articles have dealt with the duty of care the Administrator, as a fiduciary and as a person of ordinary prudence, owes to the members, former members or other persons who have a benefit entitlement under a pension plan (i.e., the "beneficiaries" of a pension plan).

The "prudent person" concept was introduced into pension legislation under the *Pension Benefits Act*, 1987. Subsections 22(1) and 22(2) of the Act impose a duty on Administrators to exercise care, diligence and

skill in the administration and investment of a plan fund and in the administration of a pension plan that persons of ordinary prudence would exercise in dealing with the property of another person.

Administrative Fees and Expenses

Subsections 22(9) and 22(10) of the Act establish general limitations on the benefits an Administrator may be entitled to from a pension plan. A plan may provide for payment from the plan fund of the Administrator's fees and expenses. That is, of course, fees and expenses related to the administration of the pension plan. In accordance with subsection 22(11), provision may also be made for the payment of the usual and reasonable fees and expenses of an agent of the Administrator billed for services rendered in respect of the pension plan.

Because each pension plan is unique, explicit limitations on the range of fees and expenses that may be paid from a pension fund have not been legislated or prescribed as a standard applicable to all pension plans. Standard limitations could hamper an Administrator's ability to make decisions which would be in the best interest of the beneficiaries of a particular pension plan. For this reason, Administrators are responsible for making prudent decisions about the appropriateness and reasonableness of any existing or potential charge against a plan fund for administrative fees and expenses.

The Administrator must first determine whether payment of the applicable fees and expenses would constitute a prudent use of the plan funds (i.e., whether the service rendered to the pension plan is appropriate and whether it would provide value to the pension plan when compared to the cost of the service). Consideration must also be given to the provisions of the pension plan document(s).

If the Administrator decides that a charge against the fund is reasonable and appropriate but the plan documents do not provide a mechanism for making the payment, no payment may be made from the plan fund. Under these circumstances, provided that the plan documents do not prohibit an amendment that would permit the intended use of the fund, an amendment may be filed with the Superintendent. The amendment would normally be considered an "adverse" amendment as described in section 24 of the Act. Consequently, the Administrator must give

written notice of the content of the amendment in accordance with the policy statement which is listed as BBS # A-200-900.

Records Retention

Administrators must comply with specific reporting, disclosure and, plan and fund administration requirements of the Act and the Regulation. The exercise of care, diligence and skill in maintaining the records of a pension plan provide the foundation for satisfying those compliance requirements.

Administrators should be aware that under certain circumstances, documents, from the inception of a pension plan, may have to be made available for review. Administrators may also be responsible for reproducing excerpts from old plan documents in disclosure notices required to be distributed to the plan beneficiaries. In situations where an individual's entitlement to a stated amount of benefit is challenged, the Administrator may be required to provide historical data in order to verify benefit calculations. Information concerning an individual's years of employment service, union membership and/or plan membership, employment earnings and pension plan contributions may be requested. The difficulty and high cost of recreating pension plan records from other sources of historical data can be avoided if accurate and complete records are retained for a reasonable period, in relation to the life of a pension plan.

In the best interest of the plan beneficiaries and the Administrator, a good business practice approach should be adhered to regarding the retention of plan records. In consideration of the mechanisms available today for electronic record-keeping, the retention and storage of pension plan records should create few problems for Administrators. Prudent administration of a pension plan cannot realistically be achieved unless the Administrator can be held accountable for responsible record-keeping practices.

Policy statements published in the *PCO Bulletin* and which deal primarily with the obligations and functions of the Administrator are listed below under the applicable Bulletin Board System (BBS) Index Numbers.

A200	Administrative Expenses	
A200-100.	actuarial fees for bargaining cannot be billed	July, 1991
A200-200.	billed to plan at regular intervals	July, 1991
A200-400.	"finders fees" or insurance commissions	May, 1990
A200-800.	payment on wind up	May, 1990
A200-850.	PBGF as administrative expense	Feb., 1992
A200-900.	what kind of expenses can be billed for plan	Sept., 1990
A300	The Administrator	
A300-100.	administrator's duties	May, 1990
A300-150.	role and responsibilities	Oct., 1992
A300-200.	duties re delinquent contributions to MEPPs	SEE M900-100
A300-300.	insurance company not administrator for annuity contracts	May, 1990
A300-400.	s. 8(1)(e) mandatory for MEPPs established by collective agreement	Nov., 1991
A300-800.	required to provide information to members and others	Mar., 1991
A300-801.	required to make documents available on request	Jul., 1991

Your Questions Answered

We are told by our readers that “Your Questions Answered” is one of the most popular sections of the *PCO Bulletin*. The section is based on enquiries from our readers. It must be remembered that, although you may believe you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case and the applicable law. Accordingly, the answers to the questions in this section have no legal authority, nor should be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.

- Q. Is the credit for the Employment Standards Act notice period, which is referred to in subsections 74(5) and (6) of the Act, only applicable for purposes of section 74 of the Act?**
- A. No. Subsections 74(5) and (6) of the Act apply on the wind up of a pension plan in whole or in part. The credit for the Employment Standards Act notice period applies to all plan members for all purposes of the Act, including sections 36, 37, 74(1) and 84(1)3. The Employment Standards Act notice period also counts towards credited service in non-contributory plans. For contributory plans the members must be given the option to make the required contributions in respect of the period of notice in order to have the period included for benefit calculation purposes.
- Q. Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of a business, or all or part of the assets of a business, may the employer wind up the pension plan with respect to those plan members who are affected by the event?**
- A. Yes, there are no prohibitions under the Act and the Regulation which would prevent an employer from winding up all or part of the pension plan under these circumstances. In fact, if the purchaser does not provide a pension plan, the vendor's plan should be wound up, in accordance with clause 69(1)(f) of the Act, with respect to those members who are no longer employed by the vendor as a result of the event.
- Q. If an application to the Commission to consent to a refund of overpayment to an employer cannot be submitted within the time frame identified under subsection 78(4) of the Act, what alternatives are available to the employer?**
- A. It is recognized that, under some circumstances, an overpayment may not be discovered in time to submit an application in the same fiscal year the overpayment was made. Where the Commission is satisfied that there are reasonable grounds for an extension of the time limit under subsection 78(4), an extension may be permitted in accordance with section 105 of the Act.

BBS INDEX

The following policies are taken from material found in the fall issue of the *PCO Bulletin* and are scheduled for upload to the BBS in late November.

O. Reg. 558/94 and supporting information were uploaded to the BBS on September 21, 1994. O. Reg. 665/94 and supporting information were uploaded on October 31, 1994.

POLICIES

A300-175.EXE POLICY: ADMINISTRATOR -

- | treatment of plan
- | fund expenses and
- | record keeping
- | (Fall 1994 Bulletin 5/3)

C125-500.EXE POLICY: COMMUTED

- | VALUE -
- | computation and
- | interest requirements
- | on transfer
- | (Fall 1994 Bulletin 5/3)

L050-603.EXE POLICY: LIFE INCOME

- | FUND -
- | direct transfers
- | of locked-in funds and
- | administration issues
- | (Fall 1994 Bulletin 5/3)

P300-050.EXE POLICY: PENSION

- | COMMISSION OF ONTARIO -
- | INFORMATION
- | PCO Annual Report 1994
- | available only in WordPerfect
- | v5.1 version
- | (Fall 1994 Bulletin 5/3)

R350-500.EXE POLICY: REFUND OF

- | EMPLOYER OVERPAYMENT
- | extension of time
- | under ss. 78(4)
- | (Fall 1994 Bulletin 5/3)

W100-110.EXE POLICY: WIND UP

- | credited service for
- | Employment Standards Act
- | notice period
- | (Fall 1994 Bulletin 5/3)

W100-460.EXE POLICY: WIND UP

- | where employer sells,
- | assigns or transfers
- | the business
- | (Fall 1994 Bulletin 5/3)

DECISIONS

XDEC-21.EXE DECISION:

- | International Playing Card
- | Company Limited, C-4609
- | Feb 14, 1994
- | (Spring 1994 Bulletin 5/1,
- | p. 49)

XDEC-22.EXE DECISION:

- | Designated Employees of
- | Bob Johnston Chevrolet
- | Oldsmobile Ltd, C-15555
- | Aug 11, 1994
- | (Fall 1994 Bulletin 5/3)

XDEC-23.EXE DECISION:

- | The Sherwood Communications
- | Group Ltd., C-9860
- | Aug 11, 1994
- | (Fall 1994 Bulletin 5/3)

XDEC-24.EXE DECISION:

- | TIE/communications Canada
- | Inc., C-9884
- | Sep 22, 1994
- | (Fall 1994 Bulletin 5/3)

XDEC-25.EXE DECISION:

- | Consolidated GenCorp Canada
- | Inc.,
- | Hourly Pension Plan, C-14498,
- | Salaried Pension Plan, C-6895
- | Aug 31, 1994
- | (Fall 1994 Bulletin 5/3)

REGULATIONS

YREG-07.EXE REGULATION:

- | O. Reg. 558/94 (English)
- | Effective Aug 23, 1994
- | Published BBS Sep 21/94
- | (Fall 1994 Bulletin 5/3)

YREG-08.EXE REGULATION:

- | O. Reg. 558/94 (French)
- | Effective Aug 23, 1994
- | Published BBS Sep 21/94
- | (Fall 1994 Bulletin 5/3)

YREG-09.EXE REGULATION:

- | Explanatory notes on
- | O. Reg. 558/94
- | Published BBS Sep 21/94
- | (Fall 1994 Bulletin 5/3)

YREG-10.EXE REGULATION:

- | Announcement - changes to
- | pension rules concerning
- | PBA and ITA (Canada) conflicts
- | O. Reg. 665/94
- | Effective Oct 28/94
- | Published BBS Nov 1/94
- | (Fall 1994 Bulletin 5/3)

YREG-11.EXE REGULATION:

- | O. Reg. 665/94 (English)
- | Effective Oct 28/94
- | Published BBS Nov 1/94
- | (Fall 1994 Bulletin 5/3)

YREG-12.EXE REGULATION:

- | O. Reg. 665/94 (French)
- | Effective Oct 28/94
- | Published BBS Nov 1/94
- | (Fall 1994 Bulletin 5/3)

YREG-13.EXE REGULATION:

- | Explanatory notes on
- | O. Reg. 665/94
- | Effective Oct 28/94
- | Published BBS Nov 1/94
- | (Fall 1994 Bulletin 5/3)

CAPSA

ZCAPSA01.EXE APPROVED VENDORS

- | OF LIFS AND LIRAS
- | May 1994 - Manitoba
- | Revised Oct 1994
- | (available only in WordPerfect
- | v5.1 - .EXE)

ZCAPSA03.EXE APPROVED VENDORS

- | OF LIFS AND LIRAS
- | July 1994 - Nova Scotia
- | Revised Sep 1994
- | (available only in WordPerfect
- | v5.1 - .EXE)

ZCAPSA05.EXE APPROVED VENDORS

- | OF LIFS, LIRAS & LRIFS
- | Aug 1994 - Alberta
- | (available only in WordPerfect
- | v5.1 - .EXE)

ZCAPSA06.EXE REGISTRATION OF LIF

- | AND LIRA CONTRACTS
- | IN ONTARIO
- | Nov 1994
- | (available only in WordPerfect
- | v5.1 - .EXE)

Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) The Pension Plan for Superior Men's Tailoring Co. Limited (C-14234), April 11, 1994
- 2) Retirement Plan of R.T.I. Leyland Inc. (C-104051), April 26, 1994
- 3) Retirement Plan For The Employees of The Hearn/Kelly Printing Company Limited (C-3206), April 29, 1994
- 4) Pension Plan for the Salaried Employees of Newman Steel Ltd. and its Associated Companies (C-7528), July 29, 1994
- 5) Newman Steel Hourly Plan (C-16175), July 29, 1994
- 6) Belmont Chevrolet Limited Pension Plan (C-3407), July 29, 1994
- 7) Revised Pension Plan for Employees of UBA Trading Company Limited (C-13775), August 4, 1994
- 8) Revised Employees' Pension Plan for Employees of Oshawa Wood Products, Limited (C-5071), August 8, 1994
- 9) Employees Pension Plan for Employees of Ambient Systems Limited (C-103251), August 9, 1994
- 10) Pension Plan for Hourly Employees of Adpak International Limited (C-101823), August 11, 1994
- 11) Pension Plan for Salaried Employees of Adpak International Limited (C-101824), August 11, 1994
- 12) Pension Plan for the Employees of Roberts Footwear & Accessories Inc. (C-104478), August 11, 1994
- 13) Pension Plan for Employees of Truck & Tractor Equipment Limited (C-102019), August 15, 1994
- 14) Pension Plan for Employees of LGT Graphics Limited (C-104524), September 27, 1994

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) The Pension Plan for the Non-Executive Employees of MacKinnon-Moncur Limited (C-12646), (effective June 8, 1993), March 4, 1994
- 2) Retirement Plan for the Employees of Steel City Truck Lines Limited (C-101940), (effective September 1, 1992), April 20, 1994
- 3) Pension Plan for Management, Supervisory, Sales and Clerical Employees of Harvey Woods Limited (C-13692), (effective February 27, 1990), July 21, 1994
- 4) Retirement Plan of R.T.I. Leyland Inc. (C-104051), (effective July 16, 1993), July 27, 1994
- 5) T.A.G. Apparel Group Inc. Pension Plan for Salaried Employees of Buckeye Industries Ltd. (C-14278), (effective February 27, 1990), July 27, 1994
- 6) T.A.G. Apparel Group Inc. Pension Plan for Van Raalte Employees (C-100740), (effective February 27, 1990), July 27, 1994
- 7) Pension Plan for Employees of Sainthill Levine, Division of Work Wear Corporation of Canada Ltd. (C-16930), (effective November 27, 1992), August 2, 1994
- 8) The Pension Plan for Superior Men's Tailoring Co. Limited (C-14234), (effective October 13, 1993), August 4, 1994
- 9) The Pension Plan for Management and General Employees of Office Analysts and Business Systems Limited (C-12433), (effective September 30, 1993), August 11, 1994

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1994 Commission Meeting Dates

The Pension Commission will convene on Thursday, December 15, 1994.

1995 Dates for Commission Meetings

The Pension Commission will convene on the following Thursdays in 1995:

January 26, February 23, March 30, April 27, May 25, June 29, July 27, September 28, October 26, November 23, and December 14. The August 31st meeting has been cancelled.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Chair
Monica J. Townson, Vice Chair
Darcie L. Beggs
Shiraz Y.M. Bharmal
Kathryn M. Bush
Donald G. Collins
C. S. (Kit) Moore
Robert F. Nickerson
Joyce A. Stephenson

Hearings Before the Commission

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. requested hearings with respect to a Notice of Proposal to Make an Order on each of the above plans issued by the Superintendent of Pensions March 3, 1993 pursuant to s. 69 of the PBA that the plans be wound up in part effective September 27, 1991. A pre-hearing conference held October 1, 1993 joined the two hearings. The hearing was held May 2, 3, June 7, and 8, 1994. In a decision dated August 31, 1994, the Commission ordered the Superintendent to carry out the Notices of Proposal and order partial wind ups of both plans. The decision is published in this issue at page 57.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 to register an Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die. The pre-hearing conference is to reconvene November 18, 1994.

TIE/communications Canada Inc. Pension Plan for Employees (C-9884)

A pre-hearing conference was held January 7, 1994, before Ms. K. Bush, presiding member, regarding an application for Commission consent to the payment of surplus on wind up to TIE/communications Canada Inc. A hearing was held August 30, 1994 and decision released September 22, 1994. The decision is published in this issue at page 51.

Sheet Metal Workers' Local Unions and Councils Pension Plan (C-15249)

Request for hearing with respect to a decision of the Superintendent of Pensions dated May 25, 1994 refusing to issue an order that the plan be administered in accordance with clause 8(1)(e) and refusing to reject a plan amendment. Pre-hearing conference held September 8, 1994. Prof. Gillese presiding. Hearing date set but adjourned sine die on consent.

Westinghouse Canada Inc. Consolidated Pension Plan (C-9356)

A request for hearing pursuant to a Notice of Proposal to Make an Order requiring the plan be wound up in part effective October 1, 1992, dated August 23, 1993. Pre-hearing conference held July 14, 1994 by Prof. Gillese. Hearing dates set are November 10, 11, 1994 and January 12, 13, 1995.

Otis Canada, Inc. Pension Plan for Draftsmen Local 164, Ontario Registration Number C-17647

Application for Commission consent to the payment of surplus to Otis Canada Inc. Pre-hearing conference held August 11, 1994 by Prof. Gillese. Hearing dates set are October 6, 7, 1994.

**Commission Decisions - Applications
Approved Since June, 1994**

**Applications Approved Under S. 8 of Reg. 909,
R.R.O. 1990, as amended, and Ss. 78(1) of the PBA -
Request for Consent of the Commission to Surplus
Withdrawal on Plan Wind Up to be filed in Court**

At the Commission meeting held July 21, 1994, the Commission consented pursuant to ss. 78(1) of the PBA and ss. 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**a) Pension Plan for Salaried Employees of the
DRG Stationary Division of Prestonia Office
Products Limited (C-103856) - Application by
Atapco Canada Limited**

Payment of surplus to Atapco Canada Limited from the Pension Plan for Salaried Employees of the DRG Stationary Division of Prestonia Office Products Limited, Registration Number C-103856, in the amount of \$384,463 as at December 31, 1990 plus investment earnings thereon, less any plan expenses, to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that

- a) the collective agreement does not contain any reference to the pension plan;
- b) all benefits, benefit enhancements, including any enhancements arising from the surplus distribution and any other payments to which members, former members and any other persons are entitled on the termination of the plan have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

At the Commission meeting held September 22, 1994, the Commission consented pursuant to ss. 78(1) of the PBA and ss. 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**a) The Retirement Plan of Safeguard Business
Systems Limited, Registration No. C-14525**

Pursuant to ss. 78(1) of the PBA R.S.O. 1990 and ss. 8(2) of Reg. 909, R.R.O. 1990, as amended, to a refund of surplus to the Safeguard Business Systems Limited out of The Retirement Plan of Safeguard Business Systems Limited, Registration No. C-14525, in the amount of \$541,297 as at November 15, 1991 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission. After all best efforts have been made for distribution of basic benefits, the remaining benefits may be paid into Court.

The Commission will file its consent with the Court pursuant to ss. 8(2) of the Regulation once the consent is effective.

**Applications Under Clause 8(1)(b) of Reg. 909,
R.R.O. 1990 (as amended by O.R. 743/91) and Ss. 78(1)
of the PBA - Surplus Withdrawal on Plan Wind Up**

At the Commission meeting held July 21, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**a) Pension Plan for Significant Shareholders of
Roder Turkey Farms (C-17049)**

Payment of surplus to Roder Turkey Farms from the Pension Plan for Significant Shareholders of Roder Turkey Farms, Registration Number C-17049, in the amount of \$159,087.51 as at August 1, 1991, plus investment earnings thereon to the date of payment. The amount of surplus as at May 31, 1994 is \$211,982.16.

**b) Pension Plan for Employees of Kango
International Inc. (C-11703) - Application by
Dobson Technologies, Inc., the sole shareholder
of Dobson Park Overseas No. 2 Limited,
successor company to Kango International Inc.**

Payment of surplus to Dobson Technologies, Inc., the sole shareholder of Dobson Park Overseas No. 2 Limited, successor company to Kango International Inc., from the Pension Plan for Employees of Kango International Inc., Registration Number C-11703, in the amount of \$110,000 as at May 19, 1993, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) The Pension Plan for Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited (C-15555)

Denied Commission consent to the payment of surplus to Bob Johnston Chevrolet Oldsmobile Limited from The Pension Plan for Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited, Registration Number C-15555. The decision is published in this issue of the *PCO Bulletin* at page 27.

d) The Employees Retirement Plan of Hoskins Alloys of Canada Limited (C-11558)

On November 25, 1993, the Commission consented to a refund of surplus from this plan to Hoskins Alloys of Canada Limited conditional upon the Commission being satisfied that all benefits including surplus enhancements were provided for to the satisfaction of the Commission.

Proposal to transfer the funds of the 13 unlocated members to a "terminated members account" at Aetna Life Insurance, the custodian for the pension fund, to hold the surplus entitlements until such time as the members come forward to claim their entitlement, is acceptable to the Pension Commission of Ontario and would satisfy the condition imposed in the Commission's consent dated November 25, 1993.

e) B.F. Goodrich Canada Inc. Pension Plan for Kitchener Plant, Local 677 (United Rubber, Cork, Linoleum and Plastic Workers of America (C-16338) - Request by Geon Canada Inc. ("Geon"), formerly B.F. Goodrich Canada Inc.

On December 17, 1993, the Commission consented to a refund of surplus from the plan to B.F. Goodrich Canada Inc. conditional upon the Commission being satisfied that all benefits were provided for to the satisfaction of the Commission and a trust fund being established to hold the members' share of the surplus for the purpose of distribution. There remains approximately \$50,000 of surplus attributable to approximately 55 unlocated members in the trust.

Consent, subject to Revenue Canada approval, to the remaining assets in the trust fund being dealt with as follows:

1. the remaining funds remain in the trust for one more year from the first anniversary of the Date of Distribution, or until February 15, 1995;
2. following the expiry of such one year period, the remaining funds will be paid out of the trust to Geon Canada, whereupon Geon Canada will assume the obligation to pay the benefits plus interest to any missing members who makes a valid claim for such benefit, provided that Geon Canada has no obligation to make further efforts to locate missing members.

f) Revised Pension Plan for the Employees of TDF Artists Limited (C-6391)

On May 27, 1993, the Commission consented to a refund of surplus from this plan to TDF Artists Limited conditional upon the Commission being satisfied that all benefits including surplus enhancements were paid, purchased or provided for to the satisfaction of the Commission.

By order of Mr. Justice Borins, May 3, 1994, TDF Artists Limited by its receiver and manager, Peat Marwick Thorne Inc., was authorized to pay to the office of the Public Trustee \$2,649.26 plus interest to the date of the Order, being the entitlement of Sara Baker pursuant to the Revised Pension Plan for the Employees of TDF Artists Limited, Ontario Registration No. C-6391, as at August 31, 1992.

Payment of the entitlement of Sara Baker pursuant to the Revised Pension Plan for the Employees of TDF Artists Limited, Ontario Registration No. C-6391, as at August 31, 1992, in the amount of \$2,649.26 plus interest to the date of the May 3, 1994 Order of Mr. Justice Borins, to the office of the Public Trustee would satisfy the condition of the Commission's consent granted May 27, 1993.

At the Commission meeting held September 22, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Pension Plan for Employees of E.T. Stanbury Pharmacy Ltd. (C-15836)

Payment of surplus to E.T. Stanbury Pharmacy Limited from the Pension Plan for Employees of E.T. Stanbury Pharmacy Ltd., Registration Number C-15836, in the amount of \$59,000 as at February 1, 1991, plus investment earnings thereon to the date of payment.

b) Pension Plan for Designated Senior Executives of Trenton Cold Storage Limited, (C-103836)

Payment of surplus to Trenton Cold Storage Limited, from the Pension Plan for Designated Senior Executives of Trenton Cold Storage Limited, Registration Number C-103836, in the amount of \$12,489 as at December 31, 1991, plus investment earnings thereon to the date of payment.

c) Executive Pension Plan of Saunders Bakery (Rockwood) Limited, (C-15931)

Payment of surplus from the Executive Pension Plan of Saunders Bakery (Rockwood) Limited, Registration Number C-15931 to Saunders Bakery (Rockwood) Limited in the amount of \$24,970 as at February 1, 1988 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the appropriate signed and witnessed consents have been provided to the satisfaction of the Commission.

d) The Rexnord Pension Plan for Mathews Conveyor Company of Canada Salaried Employees (C-13813)

Payment of surplus to Rexnord Canada Limited from The Rexnord Pension Plan for Mathews Conveyor Company of Canada Salaried Employees, Registration Number C-13813, in the amount of \$2,145,945 as at August 1, 1992, plus investment earnings thereon to the date of payment less all legal costs incurred by the company and less a proportionate share of all wind up costs and actuarial and non-legal settlement costs incurred by the company and the vested Mathews members (as defined in the Surplus Sharing Agreement).

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Application Approved under ss. 78(1), PBA & s. 10 of Reg. 909, R.R.O. 1990, as amended, Request for Consent to Surplus Withdrawal - Continuing Pension Plan and ss. 63(7) & (8), PBA, Request for Consent to Refund of Employee Contributions

At the Commission meeting held September 22, 1994, the Commission consented pursuant to ss. 78(1) of the PBA and s. 10 of the Reg., and ss. 63(7) & (8) of the PBA to the following:

a) Amalgamated Pension Plan for Salaried Employees of Greening Donald Company Limited, (C-8078)

Consent to a refund of members' required contributions from the Amalgamated Pension Plan for Salaried Employees of Greening Donald Company Limited, Registration Number C-8078, in the aggregate amount of \$94,000 as at May 31, 1994 plus credited interest to the date of payment, to members who are in the active service of the Company on or after August 13, 1993.

Consent to a payment of surplus to the Greening Donald Company Limited out of the continuing Amalgamated Pension Plan for Salaried

Employees of Greening Donald Company Limited, Registration Number C-8078, in the amount of \$3,604,800 as at May 31, 1994.

Applications for Surplus Withdrawal - Continuing Pension Plan: ss. 78(1) of the PBA & s. 10 of Reg. 909, R.R.O. 1990, as amended

At the Commission meeting held September 22, 1994, pursuant to ss. 78(1) of the PBA and s. 10 of the Reg. 909, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment from a continuing plan as follows:

a) The Pension Plan for Stanley Weigen of Peerless Carpet Corporation, (C-18421)

Denied The application of Peerless Carpet Corporation pursuant to ss. 78(1) of the PBA and s. 10 of Reg. 909, R.R.O. 1990, as amended, for a refund of surplus from The Pension Plan for Stanley Weigen of Peerless Carpet Corporation, Registration Number C-18421, in the amount of \$129,400 as at January 1, 1991 plus investment earnings thereon to the date of payment, since the application did not satisfy the requirements of c. 79(1)(d) of the PBA.

Applications Approved under ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held July 21, 1994, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) Pension Plan for Designated Executive Employees of Perstorp Components (Canada) Inc. (C-103903)

Refund of the only member's required contributions from the Pension Plan for Designated Executive Employees of Perstorp Components (Canada) Inc., Registration Number C-103903, in the aggregate amount of \$8,492.84 as at September 1, 1990 plus credited interest to the date of payment.

b) Pension Plan of Nickel Development Institute for M.O. Pearce (C-102587)

Refund of member required contributions from the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration Number C-102587,

in the amount of \$30,521 as at January 1, 1991 plus investment earnings thereon to the date of payment.

c) Pension Plan for the Employees of Ampex Canada Inc. (C-13808)

Refund of a portion of member pre-1991 required contributions from the Pension Plan for the Employees of Ampex Canada Inc., Registration Number C-13808, in the amount of \$368,054 as at January 28, 1994 plus credited interest to the date of payment.

d) Pension Plan for the Employees of Ampex Media International Corporation, Canadian Branch (C-104732)

Refund of member pre-1991 required contributions from the Pension Plan for the Employees of Ampex Media International Corporation, Canadian Branch, Registration Number C-104732, in the amount of \$88,800 as at February 28, 1994 plus credited interest to the date of payment.

e) Pension Plan for Executive Employees of S.B. Simpson Limited (C-103560)

Refund of the sole shareholder member's required contributions from the Pension Plan for Executive Employees of S.B. Simpson Limited, Registration Number C-103560, in the aggregate amount of \$31,709 as at October 1, 1989 plus investment earnings thereon to the date of payment.

At the Commission meeting held September 22, 1994, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) Addison-Wesley (Canada) Limited Pension Plan, (C-14956)

Refund of member required contributions from the Addison-Wesley (Canada) Limited Pension Plan, Registration Number C-14956, in the aggregate amount of \$323,908 as at January 1, 1991 plus credited interest to the date of payment.

b) Mack Canada Inc. Retirement Plan, (C-3080)

Refund of member required contributions from the Mack Canada Inc. Retirement Plan, Registration Number C-3080, in the aggregate amount of \$1,382,000 as at January 1, 1992 plus credited interest to the date of payment.

c) Pension Plan for Executive Associates of Toyota Canada Inc., Retirement Plan, (C-104046)

Refund of member required contributions from the Pension Plan for Executive Associates of Toyota Canada Inc., Registration Number C-104046, in the aggregate amount of \$403,548 as at September 1, 1990 plus credited interest to the date of payment.

Applications Approved under s. 105 and ss. 78(4) of the PBA - Extension of Time and Return of Overpayment

At the Commission meeting held July 21, 1994, the Commission consented pursuant to s. 105 of the PBA to an extension of time for filing an application and pursuant to ss. 78(4) of the PBA to the refund of overpayments as follows:

a) Canron Inc. Pension Plan for Designated Executives (C-23530)

Extend the time limit from the plan's 1990 fiscal year end to its 1991 fiscal year end for filing an application for the refund of overpayments;

Refund of employer overpayments totalling \$95,416.56 representing pension payments made by Canron Inc. in the 1990 and 1991 plan years, which were payable by the pension fund from the Canron Inc. Pension Plan for Designated Executives of Canron Inc., Registration Number C-23530.

b) Pension Plan for Group "B" Employees of USEPPA Holdings Limited (C-17967)

Extend the time limit from the plan's fiscal year 1992 to its 1993 fiscal year for filing an application for the refund of overpayments;

Refund from the Pension Plan for Group "B" Employees of USEPPA Holdings Limited, Registration Number C-17967, of \$24,286.50 overpayment in 1992 and \$24,286.50 overpayment made in 1993, totalling \$48,573 plus investment earnings thereon to date of payment.

Pension Benefits Guarantee Fund ("PBGF")

On September 22, 1994, the Commission, pursuant to ss. 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to ss. 83(1) of the PBA that the PBGF applies to the following pension plan:

a) Pension Plan for Salaried Employees of Provincial Crane Inc. (C-102257)

b) Pension Plan for the Employees of Newman Steel Ltd., Local Union No. 8214 (C-16175)



INDEX NO.: XDEC-22

PLAN: Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited
C-15555

DATE OF DECISION: August 11, 1994

PUBLISHED: Bulletin 5/3 (Fall 1994)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8

AND IN THE MATTER OF an application for the consent of the Pension Commission of Ontario, pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990 and section 8(1)(b) of Regulation 909, R.R.O. 1990 to a payment of surplus to Bob Johnston Chevrolet Oldsmobile Limited from the Pension Plan for Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited, Registration Number C-15555 ("the Plan")

BETWEEN:

Bob Johnston Chevrolet Oldsmobile Limited - Applicant

AND

The Pension Commission of Ontario - Respondent

Heard: July 21, 1994
Toronto, Ontario

Heard by: Eileen E. Gillese, Chair;
Monica Townson, Vice-Chair;
Darcy Beggs
M. David Brown
Kathy Bush
Don Collins
Christopher (Kit) Moore
Bob Nickerson

Actuary for the Applicant:
Bob Camp

Counsel for the Applicant:
Kevin Rowe

Nature and History of the Application

Bob Johnston Chevrolet Oldsmobile Limited (the "Applicant") applied for the consent of the Pension Commission of Ontario (the "Commission") pursuant to subsections 78(1) and 79(3) of the Pension Benefits Act, R.S.O. 1990 (the "Act") and clause 8(1)(b) of Regulation 909, R.R.O. (the "Regulation") to a payment of surplus to it in the amount of \$84,370 as at December 31, 1987, plus investment earnings thereon to the date of payment, less all expenses associated with the wind up and surplus application. The last active member in the Plan, Bob Johnston, had consented to the refund of surplus application.

The only other person ever to participate in the Plan was Grace Johnston, the former spouse of Bob Johnston. Grace Johnston's pension benefits were paid out of the Plan prior to the date of the wind up but at the date of wind up she was entitled to share in the commuted value of Bob Johnston's pension benefits. Grace Johnston had been provided with a copy of the Notice of the Application and a consent form. She had not responded so the Commission had neither a consent form from her nor submissions on the application.

History of the Plan

On September 1, 1980, the Applicant entered into an agreement with The Excelsior Life Insurance Company to establish a pension plan for its employees to be funded with individual contracts. As well, a Deed of Trust was entered into between the Applicant and Robert Johnston, Grace Johnston and Steve Krupink (the "Trustees") for the purpose of carrying out the terms and conditions of the Plan. Regulations governing the administration of the Plan, also effective September 1, 1980, were appended to the Deed of Trust as Schedule 1A.

Together, the agreement, Deed of Trust and Plan Regulations created a non-contributory, final earnings, defined benefit plan which provided maximum pension benefits for the two significant shareholders, namely, the President (Bob Johnston) and the Vice-President (Grace Johnston).

Grace Johnston terminated employment on April 30, 1986 and her benefits were paid out of the Plan in February of 1987. The Plan was wound up on December 31, 1987. By virtue of a judgment of Mr. Justice McKeown, dated November 12, 1991, Grace Johnston was entitled to a share of Bob Johnston's pension entitlements payable on Plan wind up. On October 31, 1992, the basic entitlement was paid out to Bob Johnston's RRSP with Grace Johnston's share, pursuant to the Divorce Judgment, going to her RRSP.

The actuary for the Applicant confirmed that the benefits provided were the maximum benefits permitted under paragraph 9(g) of Information Circular 72-13R6.

The Issues

Two issues arose in deciding this application. First, it was not clear that the Applicant had met the requirements of clause 79(3)(b) of the Act (the "Clause") which requires that

"... the pension plan provides for payment of surplus to the employer on the wind up of the pension plan; ..."

Second, there was a question as to whether Grace Johnston was a "former member" or "other person ... entitled to payments under the pension plan on the date of wind up" as described in clause 8(1) (b) (iii) of the Regulation. If so, her written agreement was necessary unless the Commission exercised its discretion and found it unnecessary to have her consent to the application.

The application satisfied all other requirements of the Act and Regulations and Commission policies in respect of such applications.

(Please turn to page 45 for the continuation of this decision.)

P^{*the*}**ension C**ommission of **O**ntario

Annual Report

April 1, 1993 to March 31, 1994



PENSION
COMMISSION
OF ONTARIO

COMMISSION DES
RÉGIMES DE RETRAITE
DE L'ONTARIO

250 Yonge Street
29th Floor
Toronto, Ontario
M5B 2N7

November 17, 1994

Honourable Floyd Laughren
Minister of Finance
7 Queen's Park Crescent
Frost Building South, 7th Floor
Toronto, Ontario
M7A 1Y7

Dear Minister:

I am pleased to submit to you the Annual Report of the Pension Commission of Ontario for the period of April 1, 1993 to March 31, 1994.

In the past fiscal year, the pension tribunal (the "Commission") made various significant policy decisions relating to the administration of the Pension Benefits Act. Within the statutory framework of the governing legislation, the tribunal functions as a fair and impartial decision-maker. The tribunal has rendered decisions in matters relating to surplus applications under the new negotiated surplus sharing regulations, as well as in appeals from decisions of the Superintendent on a variety of topics. The tribunal, moreover, will continue to set and communicate in writing policies which will make compliance with pension legislation easier.

The Superintendent and his staff, I am pleased to note, have been successful in several areas that have an impact on our accountability towards our stakeholders. These successes include:

- ☐ the virtual elimination of a processing backlog of applications and filings;
- ☐ meeting, most of the time, new client service standards for the administrative processing of documents;
- ☐ the reorganization of staff to make a single person responsible for designated pension plans;
- ☐ making information - including tribunal policies, ministerial announcements, and new regulations - available to interested stakeholders through an electronic information-sharing system known as the BBS;
- ☐ publishing and sending out to members of the public two booklets explaining how pension plans work, and what pension plan members may expect when their plan is wound up.

Looking towards the future, the Pension Commission of Ontario will strive to become more efficient in the services it offers and, of equal importance, I believe, provide leadership in carrying out its functions.

Your support of this work is both appreciated and essential to the Pension Commission of Ontario's success in meeting the challenges and requirements of its mandate.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Eileen E. Gillese".

Eileen E. Gillese
Chair

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I. Introduction

The Pension Commission of Ontario (PCO) is the independent agency which administers the *Pension Benefits Act, (PBA) R.S.O. 1990*, and Regulation 909, commonly referred to as the "Regulation". This is the legislation which governs employment pension plans in Ontario.

The PCO consists of two parts, each one having distinctive but complementary functions. These are, on the one hand, the nine-member pension tribunal and, on the other, the Superintendent of Pensions and his staff.

The Tribunal

The tribunal, which is an independent statutory body appointed by the Lieutenant-Governor-in-Council, makes decisions on various matters brought before it. These matters include requests to withdraw surplus funds from a pension plan and requests for refunds of contributions to employers. Working within the framework of Ontario's pension legislation, the tribunal strives to make prudent decisions that take into account the rights and obligations of pension plan members, plan sponsors, and others.

The tribunal consists of a Chair, a Vice-Chair, and seven Commissioners who serve on a part-time basis. Members of the tribunal possess expertise in various areas relating to pension plans.

The tribunal holds monthly meetings for the purpose of considering applications and requests from stakeholders in the pension industry. The tribunal also meets at different times when necessitated by requests for hearings.

Moreover, the tribunal serves as a review body to the pension industry with respect to orders which the Superintendent of Pensions proposes to make. As such, the tribunal is responsible for interpreting the PBA and the Regulation, and may substitute its decision for that proposed by the Superintendent.

The tribunal plays a key role as advisor to the Minister of Finance on pension policy matters. The tribunal recommends to the Minister changes to pension legislation which, in the opinion of the tribunal, would strengthen or improve the workings of Ontario's pension system.

In addition, the tribunal has the responsibility of administering the Pension Benefits Guarantee Fund (PBGF). This fund provides a minimum level of protection to members of defined benefit pension plans in situations where an employer becomes insolvent and the assets of a pension plan are insufficient to cover its liabilities.

Members of the Tribunal

The current Chair of the tribunal is Professor Eileen E. Gillese. Professor Gillese was appointed Chair of the tribunal on March 24, 1994. A former Vice-Chair of the tribunal, Professor Gillese will serve as Chair for a three-year term.

The current Vice-Chair of the tribunal is Ms. Monica J. Townson.

Mr. Joseph Regan, the former Chair of the tribunal, stepped down from this position on December 31, 1993, after nearly four years as Chair of the tribunal.

In addition to the Chair and the Vice-Chair, the tribunal is made up of seven Commissioners who sit as members for terms of three years. As of March 31, 1994 the Commissioners were Ms. Darcie L. Beggs, Ms. Kathryn M. Bush, Mr. Donald G. Collins, Mr. Robert F. Nickerson, Ms. Joyce A. Stephenson, and Mr. David Brown.

The Superintendent and Staff

The Superintendent of Pensions, Mr. D. Ross Peebles, and his staff administer the PBA and the Regulation.

Among their duties, the Superintendent and his staff register new pension plans and plan amendments, and review proposals for the transfer of plan assets.

In addition, Statements of Investment Policies and Goals, actuarial reports, financial statements and auditors' reports are submitted to staff.

Working within the framework of the PBA and the Regulation, the Superintendent and his staff develop procedures and policies to guide plan sponsors, administrators, and other members of the pension industry. The Superintendent's staff communicate on a regular basis with members of the pension industry, answering questions about compliance issues and providing clarification of Ontario's pension legislation.

The Superintendent is responsible, as well, for approving pension plan wind-up reports. In certain cases the Superintendent will appoint agents to administer the pension plans of insolvent companies to insure that the interests of plan members are safeguarded.

As of March 31, 1994, there was a total of 7,665 registered employment pension plans in Ontario, having approximately 1.9 million members.

PCO Communications

The Superintendent oversees the communications function of the PCO. In addition to the daily communication that takes place between the Superintendent's staff and pension industry stakeholders, the PCO relies on two regular communications vehicles to ensure that all stakeholders are kept informed of developments in the pension industry. These vehicles are the *PCO Bulletin*, a quarterly publication which is mailed to members of the pension industry, and the Bulletin Board System (BBS), a privately-run, electronic information-sharing system to which PCO stakeholders may subscribe.

PCO Bulletin

The PCO publishes the *PCO Bulletin* to ensure that members of the pension industry and the public are kept abreast of important regulatory developments. It includes information such as announcements from the Minister of Finance, new pension regulations or amendments to existing regulations, administrative practices, PCO announcements, and other pension-related information. The bulletin includes a regular feature entitled, *Your Questions Answered*, which provides responses to questions posed by readers.

The *PCO Bulletin* was redesigned this year and features a cover that provides a complete table of contents. As well, the dimensions of the publication were reduced slightly so that it could be printed at a lesser cost. Through this and other means, the PCO succeeded in lowering the cost of producing the *PCO Bulletin* by 25 percent.

Bulletin Board System

Beginning on April 1, 1993, the PCO made its published policies and administrative practices available to members of the pension industry through the BBS. This computer information network allows subscribers to access the latest information uploaded to PCO Conference #149 on the BBS. PCO stakeholders have the option of subscribing to the BBS to receive timely information and announcements from the Minister of Finance. To date, BBS subscribers include many financial institutions, actuarial consulting firms, law firms, associations and employers.

II. Achievements: 1993-1994 Fiscal Year

Processing of Applications and Filings

The PCO received 40,495 applications and filings during the fiscal year. During the same period, the Superintendent's staff processed 37,573 discrete applications and filings related to various plan matters.

The table below gives the volumes of selected types of applications and filings which were processed by staff during the year.

THE PENSION COMMISSION OF ONTARIO	
PENSION ACTIVITIES	VOLUME PROCESSED
Applications for registration of new plans	295
Pension plan amendments	3,164
Pension plan conversions	65
Distribution of plan surplus (after wind-up)	184
Partial wind-up of pension plans	158
Full wind-up of pension plans	608
Transfers of pension plans assets (through purchases/sales)	80
Restatement of plan texts	2,460

PCO staff process thousands of pension applications and filings submitted by members of the pension industry. The staff are generally able to meet their established client service standards. These standards call for the approval of applications or requests for further information within 30 or 60 days, depending on the nature of the filing or the application.

CAPSA Discussions

The Pension Commission of Ontario plays an active role in discussions with fellow members of the Canadian Association of Pension Supervisory Authorities (CAPSA). These discussions led, in the fall of 1993, to the release, for public comment, of a proposed multilateral agreement among Canadian pension regulators. It is intended that this agreement will replace an existing agreement that was signed by the majority of jurisdictions in 1968.

Although the PCO's representatives at the CAPSA discussions ensure that the regulatory interests of Ontario are taken into account, it is the responsibility of the Government of Ontario to decide whether to ratify the proposed multilateral agreement.

The Tribunal

In this fiscal year, the tribunal developed pre-hearing conference procedures to assist persons preparing for applications other than those pursuant to Section 89 of the PBA (in other words, matters other than proposed orders by the Superintendent). The availability of these procedures has made the application process more efficient.

PCO Booklets for Pension Plan Members

The PCO published a booklet during the fiscal year to help members of the public gain a better understanding of Ontario's pension plan system.

In the spring of 1993 the PCO published, in both official languages, a new booklet entitled *Understanding Your Pension Plan: A Guide for Members of Employer Sponsored Pension Plans*. Designed to provide information to members, the booklet explains in simple language how pension plans work. The booklet generated a positive response from employers, plan sponsors and administrators. The PCO sent out almost 80,000 copies of this booklet.

The PCO also distributed a booklet entitled, *When Your Pension Plan Winds Up: What it Means to Members*, which was published in 1992. This booklet, which is also available in English and in French, explains what plan members can expect from the process of winding up a pension plan. The booklet makes clear the benefit entitlements and rights that plan members generally have in such situations. The PCO sent almost 15,000 copies of this booklet to members of pension plans.

III. Coming in the Next Fiscal Year

Improved Service Standards

PCO staff have taken measures to improve their achievement rate with respect to meeting the organization's client service standards for the approval of filings and applications. Specific measures include re-orienting staff resources so as to reduce by 50 percent, in most cases, the number of case files for which pension officers and analysts are responsible. On average, officers and analysts are now assigned fewer than 300 case files, as opposed to the more than 600 files prior to reorganization.

The PCO expects that initiatives undertaken this year will improve significantly client service standards next year.

Compliance and Enforcement Unit

The PCO has established a Compliance and Enforcement Unit. The Unit has a mandate to co-ordinate and manage the PCO's response to alleged breaches of Ontario's pension legislation.

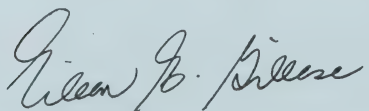
PENSION COMMISSION OF ONTARIO

**IV. Statement of Revenue and Expenditure for the Year Ended
March 31, 1994**

	1993/94 (\$000's)	1992/93 (\$000's)
Revenue		
Registration fees and annual information return filing fees	8,045	7,979
Miscellaneous	19	14
	<u>8,064</u>	<u>7,993</u>
Expenditure		
Salaries and wages	3,836	4,265
Employee benefits	977	734
Transportation and communication	133	195
Services	1,282	844
Supplies and equipment	89	400
	<u>6,317</u>	<u>6,438</u>
Excess of revenue over expenditure	<u>1,747</u>	<u>1,555</u>

Note: The provincial auditor examines annually the accounts and financial transactions of Ontario's Commissions. The audited financial statements of the Pension Commission of Ontario and the Pension Benefits Guarantee Fund are filed with the Public Accounts of Ontario, and may be consulted there.

Approved on behalf of the Commission



Chair



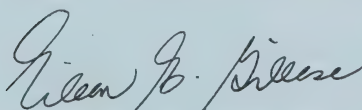
Vice-Chair

PENSION COMMISSION OF ONTARIO

V. Statement of Pension Benefits Guarantee Fund for the Year Ended March 31, 1994

	1993/94 (\$000's)	1992/93 (\$000's)
Income		
Premium revenue	42,073	2,737
Investment income	1,136	423
Recoveries	63	1,700
	<u>43,272</u>	<u>4,860</u>
Expenses		
Interest expense	858	2,836
Claims	1,678	1,865
Investment management fees	36	11
Other	0	1
	<u>2,572</u>	<u>4,713</u>
Excess of income over expenses	40,700	147
Unrealized changes in market value of investments	<u>(211)</u>	<u>(25)</u>
	40,489	122
Balance in Fund, beginning of year	<u>23,257</u>	<u>(23,379)</u>
Balance in Fund, end of year	<u><u>17,232</u></u>	<u><u>(23,257)</u></u>
Consisting of:		
Cash and short term deposits	12,128	2,357
Government Bonds at market (cost - \$5,172; 1993 - \$3,327)	5,027	3,393
Accrued interest	77	81
Loan from the Province of Ontario including accrued interest	0	(29,086)
	<u><u>17,232</u></u>	<u><u>(23,257)</u></u>

Approved on behalf of the Commission



Chair



Vice-Chair

PENSION COMMISSION OF ONTARIO

**Annexe A: Statement of Revenue and Expenditure for the Year
Ended March 31, 1993**


	1992/93 (\$000's)	1991/92 (\$000's)
Revenue		
Registration fees and annual information return filing fees	7,979	6,637
Miscellaneous	14	11
	<u>7,993</u>	<u>6,648</u>
Expenditure		
Salaries and wages	4,265	3,875
Employee benefits	734	686
Transportation and communication	195	176
Services	844	745
Supplies and equipment	400	367
	<u>6,438</u>	<u>5,849</u>
Excess of revenue over expenditure	<u>1,555</u>	<u>799</u>

Note: The provincial auditor examines annually the accounts and financial transactions of Ontario's Commissions. The audited financial statements of the Pension Commission of Ontario and the Pension Benefits Guarantee Fund are filed with the Public Accounts of Ontario, and may be consulted there.

Approved on behalf of the Commission



Chair



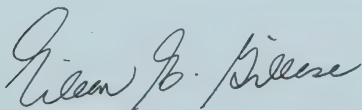
Vice-Chair

PENSION COMMISSION OF ONTARIO

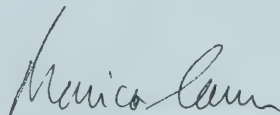
**Annexe B: Statement of Pension Benefits Guarantee Fund for
the Year Ended March 31, 1993**

	1992/93 (\$000's)	1991/92 (\$000's)
Income		
Premium revenue	2,752	2,101
Interest income	423	378
Recoveries	1,700	193
	<u>4,875</u>	<u>2,672</u>
Expenses		
Interest expense	2,836	2,627
Claims	1,865	1,229
Refund of premium revenue	15	8
Investment management fees	11	5
Other	1	2
	<u>4,728</u>	<u>3,871</u>
Excess (deficiency) of income over expenses	147	(1,199)
Unrealized changes in market value of investments	(25)	35
	122	(1,164)
Balance in Fund, beginning of year	(23,379)	(22,215)
Balance in Fund, end of year	<u>(23,257)</u>	<u>(23,379)</u>
Consisting of:		
Cash and short term deposits	2,357	2,123
Government Bonds at market (cost - \$3,327; 1992 - \$1,860)	3,393	1,950
Accrued interest	81	100
Loan from the Province of Ontario, including accrued interest	(29,088)	(27,552)
	<u>(23,257)</u>	<u>(23,379)</u>

Approved on behalf of the Commission



Chair



Vice-Chair

General enquiries regarding the Pension Commission of Ontario Annual Report, 1993-1994, should be directed to:

Pension Commission of Ontario
29th Floor
250 Yonge Street
Toronto, Ontario
Canada
M5B 2N7

Telephone (416) 314-0660

Copies of the Pension Commission of Ontario Annual Report, 1993-1994, are available from the Pension Commission of Ontario.

Pour vous procurer un exemplaire en français du Rapport annuel (1993 - 1994) de la Commission des régimes de retraite de l'Ontario, veuillez communiquer avec la Commission des régimes de retraite de l'Ontario au numéro de téléphone suivant : (416) 314-0660.



Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited - Decision
(Continued from page 28)

Issue No. 1 - Clause 79(3) (b) of the Act

Article 7 of the original Deed of Trust reads as follows:

Should the Plan be discontinued by the Employer as therein provided for or should the Employer be wound up, discontinued, adjudged bankrupt or make a voluntary assignment in bankruptcy the Trustees shall assign and transfer to the Employees their respective interest in the Pension Contracts then held by the Trustee in order to carry out the provisions of the Plan and shall distribute pro rata among the Employees then in the Plan any monies held by the Trustees not required to reimburse the Trustees their cost and expenses hereunder. (emphasis added)

As mentioned above, appended as Schedule 1A to the Deed of Trust were the Plan Regulations. The second paragraph of Article 20 of the Plan Regulations reads as follows:

In the event of discontinuance of the Plan or the winding up or bankruptcy of the Employer, all monies paid into the Plan shall vest absolutely in those members who have not then retired or whose employment has not been terminated. All surplus that would result in benefits to the Members being in excess of the maximum permitted under paragraph 9(g) of Information Circular 72-13R6 is to be refunded to the Employer.

The conflict between the two provisions is readily apparent.

Article 7 of the Deed of Trust stipulates that at the time of plan wind up, all monies shall be distributed amongst the Employees. In the instant case, this would mean that all surplus monies would go to Bob Johnston and, possibly as a result of the Divorce Judgment a portion would be due to Grace Johnston.

However, if the second paragraph of Article 20 of the Plan Regulations (which was appended as a Schedule to the Deed of Trust and therefore became part of the trust deed) is operative, any surplus after maximum payouts was to be refunded to the Applicant.

The two clauses are in conflict. The question is which provision is dominant? In order for the Applicant to succeed, it must establish that Article 20 of the Plan Regulations is dominant because the burden of proof lies on the Applicant to satisfy the Commission that it has met the requirements of the Act. No law was offered to resolve the apparent conflict between the provisions leaving the Commission in the position that it was unable to resolve the apparent conflict in the two provisions in favour of the Applicant.

Should the Applicant be able to establish that it meets the requirements of the Clause either by demonstrating that the second paragraph of Article 20 of the Plan Regulations is dominant or otherwise, then it is entitled to reapply to the Commission for surplus withdrawal. Otherwise, if the Trustees wish to complete their obligations and dispose of the assets of the Pension Plan in accordance with Article 7 of the Deed of Trust, they must determine whether to distribute solely to Bob Johnston or whether they are obliged to pay out a share to Grace Johnston pursuant to the Divorce Judgment or otherwise.

Issue #2 -- The Consent of Grace Johnston

In light of our finding in relation to the first issue, it is unnecessary to determine this issue.

Result

The application is dismissed.

Dated this 11th day of August, 1994 at Toronto, Ontario.

Eileen E. Gillese, Chair
Bob Nickerson

Kathy Bush
Monica Townson, Vice Chair

Don Collins
Darcy Beggs

Christopher (Kit) Moore
M. David Brown



INDEX NO.: XDEC-23

PLAN: Pension Plan for Employees of The Sherwood Communications Group Ltd. and Its Subsidiary and Associated Companies
C-9860

DATE OF DECISION: August 11, 1994

PUBLISHED: Bulletin 5/3 (Fall 1994)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8

AND IN THE MATTER OF an application by The Sherwood Communications Group Ltd. for a Payment of Surplus to The Sherwood Communications Group Ltd. from the Pension Plan for Employees of The Sherwood Communications Group Ltd. and Its Subsidiary and Associated Companies

BETWEEN:

The Sherwood Communications Group Ltd. - Applicant

Heard: June 23, 1994
Toronto, Ontario

Heard by: Eileen E. Gillese, Chair
Monica Townson, Vice Chair
Darcy Beggs
M. David Brown
Don Collins
Christopher (Kit) Moore
Joyce Stephenson

Counsel for the Applicant:
David Wentzell
Hilary Clarke
John Higgins

Nature and History of the Application

The Sherwood Communications Group Ltd. (the "Applicant") applied for the consent of the Pension Commission of Ontario (the "Commission") pursuant to subsection 78(1) of the Pension Benefits Act R.S.O. 1990 (the "Act") and Regulation 909, R.R.O. 1990 to a payment of surplus to it from the Pension Plan for Employees of the Sherwood Communications Group Ltd. and its Subsidiary and Associated Companies, Registration No. C-9860 (the "Plan"). The Plan was terminated effective May 31, 1991; the amount of surplus in issue was \$882,270, as at May 31, 1991, plus investment earnings thereon to the date of payment less expenses.

The Applicant had previously made an application to the Ontario Court of Justice (General Division) pursuant to clause 7a(2) (c) of Ontario Reg. 708/87, as that clause read immediately before December 18, 1991 (the "Old Regulation"), for a declaration that it was the owner of the surplus assets in the Plan. The application was responded to by legal counsel for two former members of the Plan and one unrepresented former Plan member. On June 5, 1992, Carruthers J. dismissed the application, stating that the matter ought to be determined by the Commission.

... I drew to the attention of counsel at this time that the Act provides that the Pension Commission of Ontario (the "Commission") is to deal with such a matter. I asked, therefore, in the light of the provisions of the Act, why its scheme was not being followed.

... By virtue of the terms of Section 97(a) of the Act it is the duty of the Commission to "administer the Act and regulations". To my mind that means that the Commission is required, before granting its consent under Section 79(1) to determine that "the Pension Plan provides for payment of the surplus to the employer on the wind up of the Pension plan".

I must conclude that in the course of fulfilling this aspect of its duty the Commission is bound to consider all relevant material and is not subject to any restrictions in this respect

Although legal counsel for the two represented former members filed a representation with the Commission objecting to the application, the objection was withdrawn before the application came on for hearing by the Commission.

The Adjournment Request

In keeping with normal practice, the staff of the Commission prepared a report on the application for the benefit of the Commission members that heard the matter. The report was dated June 14, 1994, and a copy was provided to the Applicant. In the staff report, the staff indicated that the application might not satisfy the Clause. The Applicant prepared a written submission addressing the staff's concerns. The staff report, the Applicant's response and the full application were before the Commission when it heard the matter on June 23, 1994. The Applicant's legal and actuarial representatives were invited in to answer the Commission's questions and to speak to the matter of whether the application met the requirements of the Clause. The full text of the trust agreement was not before the Commission and the Applicant's counsel undertook to provide us with the same.

Sometime thereafter, the Applicant changed legal counsel who then sought an adjournment of the matter. The Commission rejected the request for the following reasons. The matter had been fully considered and the Applicant heard, all that remained was for the trust agreement to be provided and the Commission to issue written reasons. The Commission felt that to allow an adjournment in the circumstances was to invite abuse of its processes. There would be nothing to stop applicants from bringing complex applications which require a great deal of time to prepare and understand and then if there is an indication that the application might not be successful to change legal counsel and attempt to change the application. We are not suggesting that that is what happened here but rather explaining why we rejected the application for an adjournment. Up to the point where the Commission hears a matter, an applicant is free to withdraw its application. Indeed, it quite often happens that after a staff report is created, an application is withdrawn or changed. However, where as here, the application has been heard and all that remains is to issue reasons for decision, there is nothing to be gained by granting an adjournment.

The Issue

Subsection 79(3) of the Act bars the Commission from consenting to an application for the payment out of surplus pension funds on plan wind up unless the requirements contained in clauses (a) through (d) of that subsection have been met. The Commission found that clauses (a), (c) and (d) of subsection 79 (3) had been met. At issue was whether the Applicant had met the requirements of clause 79 (3) (b) (the "Clause") which requires that

"the pension plan provides for payment of surplus to the employer on the wind up of the pension plan"

All other requirements of the Act and regulations had been satisfied.

The Role of the Commission

Before turning to the merits of the application, a comment on the role of the Commission in applications like this should be made. This application is made under the terms of the Old Regulation and, as such, the Applicant seeks 100% of the surplus. Whereas the regulations in effect since December 18, 1991 (the "New Regulations") provide an opportunity for negotiated surplus sharing arrangements, the Old Regulations did not. The Commission has indicated in cases decided pursuant to the New Regulations, that its scrutiny of the history of plan documentation may, in certain circumstances, be less stringent. (See, for example, the Commission decision in *Western Star Trucks Inc.*, *PCO Bulletin*, Vol. 4, Issue 2, p. 35.) This application, however, is not brought pursuant to the New Regulations and the Commission must be scrupulous in its examination of the plan documentation in determining whether the requirements of the Clause have been met.

The fact that the application is unopposed does not diminish the Commission's fiduciary obligation to ensure that the terms of the legislation have been met. We cannot assume the validity of Section 14.04, the current plan provision providing for surplus reversion to the Applicant, simply because the application is unopposed.

An Abbreviated History of the Plan

1944 - 1965

The Plan was established on December 14, 1944, by D. H. Foster Corporation as a benefit arrangement funded through the purchase of individual annuity contracts. The 1944 policies were converted on a paid-up basis on December 14, 1958 and the Plan sponsor established a group annuity policy.

1965

Effective October 1, 1965 the group policy was wound up and the assets from the 1944 and 1958 policies were transferred to it. A contributory career average defined benefit pension plan was created. A group annuity policy was issued effective October 1, 1965 by Crown Life, which was amended on a number of occasions.

1974

In December of 1974 the plan sponsor purported to enter into a trust agreement with six individual trustees. No assets were ever paid into the trust and we are satisfied that no trust arose at that time. Effective October 1, 1981 the individual trust arrangement was terminated.

1976

On or about January 16, 1976, the name of the company was changed to The Sherwood Communications Group Ltd. and the Plan text was restated.

1981

The Applicant transferred the assets of the Plan from Crown Life to Canada Trust Company and a trust arose.

1987

Effective December 30, 1987, all active members of the Plan, other than the “Group 2 Key Employee” class, became members of a newly established money-purchase pension plan. One hundred and forty (140) of the 147 Plan members elected to transfer the lump sum value of their Plan benefits for pre-1988 service to the new money purchase plan. After the transfer, only the 7 members of the “Group 2 Key Employee” class, 18 deferred vested members and 11 retirees remained in the plan.

1988

The Plan text was restated effective January 1, 1988. It was this text that was in effect at the time of the Plan termination.

The Relevant Provisions

Section 14.04 of the 1988 Plan text, which was in effect at the Plan’s termination, provides for payment of surplus to the Applicant on plan wind up.

14.04 Wind-up Surplus

If after provision for benefits payable to or in respect of Members on the wind-up in whole or in part of the Plan, the assets of the Pension Fund exceed its liabilities (such excess referred to hereafter as “surplus”), such surplus shall be refunded to the Company, or used as the Company may direct, ...

The question is whether Section 14.04 is valid. The answer to the question lies in the 1976 Plan text.

The relevant provisions of the 1976 text are found in Section 15 of the Plan and, specifically, Section 15.2.

15.2

No amendment to the Plan shall reduce the benefits accrued to the Members under this Plan up to the date of such amendment, nor shall the Company have the power to apply any contributions made to that date for purposes other than the benefit of the Members, their respective estates, beneficiaries or joint annuitants, in accordance with the provision of the Plan. (emphasis added)

The Supreme Court of Canada decision *Schmidt v. Air Products of Canada Ltd.* makes clear that, as there was no trust in effect in 1976, contractual principles govern. Applying basic contract law, the effect of Section 15.2 was to expressly limit the Applicant’s power of amendment so that after 1976, the Applicant could not validly make an amendment which would have the effect of diverting, from Plan beneficiaries, any contributions made to the Plan to the date of amendment.

Section 14.04 of the Plan purports to cause “surplus” to revert to the Applicant. Surplus is defined in Section 14.04 itself as the amount by which “the assets of the Pension Fund exceed its liabilities”. By this definition, surplus can include contributions and, therefore, *prima facie* Section 14.04 is invalid. The Commission could dispose of the application on this basis alone because if Section 14.04 is invalid the applicant has failed to satisfy the requirements of the Clause.

The Applicant, however, argues that the surplus refund it seeks consists not of contributions but of the interest accumulated on contributions. Therefore, the argument runs, although the word “surplus” is defined so as to include contributions, in fact the surplus does not include contributions and thus Section 14.04 can be treated as having met the requirements of the Clause. It is not clear to the Commission that it could accept such as

argument; the Clause requires that “the pension plan provides for payment of surplus to the employer on plan wind up”. Can the Commission accept, as fulfilling the requirements of the Clause, a plan provision that is *prima facie* invalid just because the amounts actually sought might not be caught by the limitation on the amendment provisions?

We are also troubled by the fact that the application is brought by the Applicant who is the administrator of the Plan. As administrator, the Applicant is a fiduciary. Is it acceptable for a fiduciary to make this argument which clearly is to the detriment of the plan members? This concern is especially troubling to the Commission in light of the events of 1987. The conversion that took place in 1987 took place two days before the coming into force of the Pension Benefits Act, 1987. Section 14(10) of O. Reg. 500/83 (the regulations that were then operative) provided that:

(10) Where employer contributions to a pension plan cease as a result of the adoption of a new plan, the original pension plan shall be deemed not to have been terminated or wound up under this section or under any section of the Act and the benefits of the original plan shall be deemed to be benefits associated with the new plan in whole or in part in respect of service prior to the establishment of the new plan, whether or not the assets and liabilities of the original plan have been consolidated with those of the new plan.

Little evidence was provided about the conversion in 1987 but it is probable that the lump sums transferred to the money purchase plan in 1987 were less than the actuarial liabilities for the corresponding benefits in the Plan. The release of those liabilities in the Plan would have resulted in a surplus in the Plan to the extent that the liabilities exceeded the lump sum transfers. If that is the case, then some of the surplus may be attributable to contributions made by or on behalf of the employees who elected to transfer to the money purchase plan. Again, as the Applicant is the administrator of the Plan and a fiduciary and in light of the Commission’s role as a fiduciary, these concerns would have to be addressed satisfactorily in order for the application to meet the requirements of subsection 79(3) of the Act.

In any event, we do not need to rule on the Applicant’s argument that Section 14.04 is valid for factual reasons because we do not accept the submission that none of the surplus is attributable to contributions. The Applicant’s contention that none of the surplus is attributable to contributions is based on the assumption that contributions were used to pay benefits before interest on the contributions was used. No authority for making this assumption is known to the Applicant and none is known to the Commission. How can the Commission accept this assumption? It is at least equally valid to assume that contributions and interest were used equally to pay benefits or that interest was used first. If interest on contributions was used first, then at least some of the surplus would be attributable to contributions and the Applicant would not be entitled to it.

Conclusion

Section 15.2 of the 1976 Plan barred the Applicant from amending the Plan so as to recover contributions and Section 14.04, by its terms, purports to cause surplus assets to revert even if the surplus assets include contributions. Thus, Section 14.04 is invalid. Factually, the Applicant cannot rely on Section 14.04 to meet the requirements of the Clause because the Applicant cannot establish that the surplus it seeks does not include contributions.

The Applicant has failed to meet the requirements of clause 79(3)(b) of the Act thus the Commission refuses to grant its consent to the surplus withdrawal application.

Dated this 11th day of August, 1994 at Toronto, Ontario.

Eileen E. Gillese	Darcy Beggs
M. David Brown	Don Collins
Christopher (Kit) Moore	Joyce Stephenson
Monica Townson	



INDEX NO.: XDEC-24

PLAN: Pension Plan for Employees of TIE/communications Canada Inc.
C-9884

DATE OF DECISION: September 22, 1994

PUBLISHED: Bulletin 5/3 (Fall 1994)

IN THE MATTER OF The Pension Benefits Act, R.S.O. 1990, c. P.8

AND IN THE MATTER OF Pension Plan for Employees of TIE/communications Canada Inc., (C-9884)

AND IN THE MATTER OF Application for Commission Consent to Payment of Surplus on Plan Wind Up by
TIE/communications Canada Inc.

BETWEEN:

TIE/communications Canada Inc. - Applicant

AND

John Davis, Krishnaswamy Natarajan, Apurba K. Das and
M. Szpindel - Respondents

AND

Plessey Canada (1987) Limited - Respondent

AND

The Former Employees of Plessey Canada (1987) Limited - Respondent

Hearing: August 30, 1994
Toronto, Ontario

Heard by: Eileen E. Gillese, Chair
Monica Townson, Vice Chair
Darcie Beggs, member
Kathryn M. Bush, member
Christopher (Kit) Moore, member

REASONS FOR DECISION

Nature of the Application

TIE/communications Canada Inc. (the "Applicant") applied to the Pension Commission of Ontario (the "Commission") for consent to payment of the surplus in the Pension Plan for Employees of TIE/communications Canada Inc. C-9884 (the "Plan") in the amount of \$1,359,535 plus investment earnings thereon to it of which it sought \$1,249,292 as at April, 1991, plus investment earnings thereon to the date of payment and less expenses; it was prepared to distribute approximately \$110,243 to the Plan members.

The application was brought pursuant to sections 78 and 79 of the *Pension Benefits Act*, R.S.O. 1990 (the "Act") and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended (the "Regulations").

The Issues

A pre-hearing conference held at the Commission offices before Kathryn Bush resulted in an order dated the 20th day of May, 1994, that this matter be resolved upon the basis of written submissions and oral submissions. Five issues were to be addressed. In essence, they were as follows:

- Issue 1: Has the administrator of the Plan paid out all benefits and other payments to which members, former members and any other persons were entitled on the termination of the Plan? If not and there were minor payments outstanding, could the application be heard?
- Issue 2: Did the Notice distributed by the Applicant satisfy the content requirements of clause 28(5)(c) of the Regulations?
- Issue 3: Has the Applicant satisfied the requirements of clause 79(3)(b) of the Act?
- Issue 4: Was the Plessey Pension Plan entitled to receive \$375,000.00 and interest from June 28, 1991, to be paid forthwith from the surplus in the Tie Plan?
- Issue 5: Could the Commission order that the legal fees of the former Employees, in an amount not to exceed \$15,000.00, be funded out of the surplus in the Plan?

The Background

Plessey Canada Limited ("Plessey") initially had a fully insured group annuity policy which was suspended on a paid up basis as of July 1, 1967.

Effective July 1, 1967 Plessey established the Pension Plan for Employees of Plessey Canada Limited, a contributory, career average earnings defined benefit plan.

In 1983 the majority of assets of Plessey were sold to the Applicant; the assets and liabilities of the pension plan were transferred to the Applicant and the Plan was renamed the Pension Plan for Employees of TIE/communications Canada Inc.

Immediately prior to the sale, a division of Plessey was "spun off" and a pension plan named Pension Plan of Plessey Canada (1983) Ltd. (the "new Plessey Plan") was established. Twelve members of the Applicant's pension plan transferred to the new Plessey Plan and in 1990 an interim transfer of \$521,200 from the Plan to the new Plessey Plan was approved by the Superintendent of Pensions. The amount to be transferred was the subject matter of a dispute between the Applicant and Plessey; a settlement agreement was reached in June 1991 that a further transfer of \$375,000 plus interest would be made to Plessey by the Applicant. However, the two parties disagreed about other material terms of the settlement agreement. The Applicant maintains that its agreement to pay the further \$375,000 plus interest was conditional upon it obtaining the surplus funds in

the Plan. Plessey's view of the settlement agreement was that the monies were to be paid to it as soon as the Plan was wound up. Plessey sought the assistance of the Commission in the form of an order directing that \$375,000 plus interest be paid to it from the surplus Plan funds.

The Plan was wound up effective April 1, 1991 and the Superintendent approved the payment of benefit entitlements by letter dated August 31, 1992.

The Relevant Legislation

The legislation governing this Application is set out now for ease of reference.

Pension Benefits Act, R.S.O. 1990, c. P.8:

78. -- (1) No money may be paid out of a pension plan to the employer without the prior consent of the Commission.

79. -- (3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension plan.

Subsection 8(2) of the current regulation, Reg. 909, R.R.O. 1990 governs the Application. It provides that:

8(2) Despite subsection (1), a payment may be made from surplus out of a pension plan that is being wound up in whole or in part, if,

- (a) the payment would have been permitted by this section as it read immediately before the 18th day of December, 1991; and
- b) notice of proposal to wind up the pension plan was given to the Superintendent before the day this subsection comes into force.

The above sections, immediately before the 18th day of December, 1991, read as follows:

- (2) Payments may be made from surplus out of a pension plan that is being wound up in whole or in part, ...
 - (c) if the Commission files with the court a consent under subsection 79(1) of the Act, where a court order authorizes the distribution of funds from surplus.

Thus, the Application was brought pursuant to clause 7a (2) (c) of O. Reg. 743/91 as it read just prior to Dec. 18, 1991.

Issue 1: Has the administrator of the Plan paid out all benefits and other payments to which members, former members and any other persons were entitled on the termination of the Plan? If not and there were minor payments outstanding, could the Application be heard?

We hold that the Commission can hear the application on the basis that it may consent to the payment of surplus and provide that such consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Issue 2: Did the Notice distributed by the Applicant satisfy the content requirements of clause 28(5)(c) of the Regulations?

The alleged defects in the Notice related to the fact that it did not comply with the Commission policy on the contents of such notices. However, the Commission policy was established after the Notice was distributed so the Notice should not be held to be defective solely on that basis. In any event, it is clear that in law a policy is only guidance and each case must be decided on its own facts. In light of the certification by the actuary as to the appropriateness of the Notice and the finding below regarding entitlement, we find that the Notice satisfies clause 28(5)(c) of the Regulation.

Issue 3: Has the Applicant satisfied the requirements of clause 79(3)(b) of the Act (the "Clause")?

We find that the original pension plan document and Trust Agreement, read together, establish the Applicant's entitlement to surplus thereby satisfying the requirements of the Clause. As the Air Products case stipulates, we begin with an examination of the original plan documents.

1967 Plan Text

SECTION 3 TRUST FUND

All the contributions of the Members and the Company which are made in accordance with the provisions of this Plan shall be paid into a Trust Fund established with the Company, as Trustee, or with such other trustee or trustees as the Company may in its sole discretion appoint. The Trustee shall administer the Trust Fund in accordance with the Trust Agreement entered into between the Company and the Trustee. *A copy of this Plan shall be attached to and thereby made a part of the Trust Agreement.*

The assets of the Trust Fund shall be invested in accordance with the provisions of the Pension Benefits Act, and any other legislation governing the investment of pension funds.

SECTION 16 FUTURE OF THE PLAN

3. Should the Plan be wholly discontinued or terminated, the Company shall not be obligated to make any further contributions to the Plan and the Pension Fund shall be allocated for the provision of the benefits to which Members, their respective estates, beneficiaries and joint annuitants are entitled in such equitable manner as may be determined by the Company in consultation with the Actuary. Such benefits may be provided either through the purchase of annuity contracts from the Canadian Government Annuities Branch or from an insurance company licensed to do business in Canada in the same form as the benefits elected by the Members, or through the continuation of this Pension Fund or the establishment of a new Pension Fund for this purpose. *In the event there should be a surplus remaining in the Pension Fund after the provision of all accrued benefits to the Members, their beneficiaries and joint annuitants, such excess funds shall revert to the Company.*

4. Should the Company be wound up or become bankrupt, the assets held in the Pension Fund pursuant to the Plan shall be applied, first, for the benefit of the Members, and their respective estates, beneficiaries and joint annuitants, in such equitable manner as shall be determined by the liquidator or trustee in bankruptcy of the Company in consultation with an actuary. No liability shall attach to the Company or to the liquidator or trustee in bankruptcy in connection with the application or distribution of such funds if made in good faith. Such distribution of assets may be made in any manner permitted by the rules and regulations of the Department of National Revenue with respect to registered pension plans and to the rules and regulations of the appropriate provincial regulatory bodies as they affect the individual Members. *If, after making full provision of the accrued pension benefits payable to that date to Members of the Plan, their estates, beneficiaries and joint annuitants, there should be a surplus remaining in the Pension Fund, such surplus shall revert to the Company or be used as the Company may direct.* [Emphasis Added]

1967 Trust Agreement

ARTICLE 12.

In the event of the discontinuance of the Plan the Trustee shall dispose of the Trust Fund as directed in writing by the Company in accordance with the provisions of the Plan.

The 1967 Trust Agreement also contained the following language regarding the irrevocability of payments and transfers of cash and property by the Company:

ARTICLE 2.

- (a) The Company by this Agreement establishes with the Trustee a fund (herein called "the Trust Fund") comprising all cash and property acceptable to the Trustee now and hereafter received by it in trust for the purposes of the Plan, together with all proceeds, investments, reinvestments and income and profits arising therefrom less all payments, deductions and withdrawals therefrom authorized hereunder. *Payments and transfers of cash and property by the Company to the Trust Fund shall be absolute and irrevocable.* (Emphasis Added)

All subsequent plan documentation similarly provided for surplus to be paid to the Applicant on a plan wind-up.

The more specific language regarding surplus reversion on plan termination contained in Sections 16.3 and 16.4 of the Plan text by virtue of Article 12 of the Trust Agreement governs the disposition of surplus assets on plan wind up. They, in effect, restrict the irrevocability of funds transferred to the trust contemplated by Article 2 of the trust document to when the Plan is ongoing.

The original plan booklet distributed to plan members in about 1967 stated that "all contributions made by the Company are irrevocable and must remain in the Trust Fund for the sole benefit of members and their beneficiaries". However, the booklet also contained a statement as follows:

This booklet is intended to provide information in a convenient form. It does not in any way enlarge, modify or change the meaning of the official text of the Pension Plan or any benefits available thereunder.

Further the booklet was amended in 1974 such that from that date forward there was no statement that contributions were irrevocable. Finally, there was no evidence of reliance adduced regarding the 1967 booklet. We find, the booklet does not derogate from the Applicant's entitlement to surplus assets in the Plan on a plan wind-up.

Accordingly, we have found that the Applicant satisfied the requirements of the Clause.

Issue 4: Was the Plessey Pension Plan entitled to receive \$375,000.00 and interest from June 28, 1991, to be paid forthwith from the surplus in the TIE Plan?

With regret, we do not accept that the Commission has jurisdiction to make the order sought by Plessey. It is conceded by the relevant parties that the Applicant was to pay the sum in question pursuant to the settlement agreement. But the issue we are called upon to resolve relates to the terms upon which the payment was to be made and that is a matter of contract law, something over which we do not have jurisdiction.

However, in light of our finding that the Applicant, subject to obtaining a court order pursuant to subsection 7a(2)(c), is entitled to the surplus funds, it appears that the only ground upon which the Applicant relied to withhold payment is gone and the money should be transferred to Plessey. That said, we simply reiterate that we are without jurisdiction to make the order as sought by Plessey.

Issue 5: Can the Commission order that the legal fees of the former Employees, in an amount not to exceed \$15,000.00, be funded out of the surplus in the Plan?

The power to award costs must be expressly conferred. No such authority has been conferred upon us by the legislation. It is with regret that we make this ruling as we are sympathetic to the fact that without such funding it is difficult for plan members to challenge applications such as these.

Conclusion

The Commission consents to the withdrawal of surplus in favour of the Applicant acknowledging that the Applicant has agreed to pay to the plan members on the date of wind up \$110,243, plus interest from April 1, 1991, from the surplus. Our consent is made subject to the Applicant satisfying us that all benefits and other payments have been made to members, former members and any other persons entitled on plan termination.

The Applicant has noted that to the extent the Confederation Life Insurance Company is ultimately unable to pay the entire amount of the Plan assets to the Applicant, the Applicant will reduce the amount to be paid to the plan members in accordance with the reduction which it suffers in the return of assets from the Confederation Life Insurance Company. As we have found that the Applicant is entitled to the surplus, it is entitled to follow its proposed course of action.

Dated this 22nd day of September 1994 at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair
Monica Townson, Vice Chair
Darcie Beggs
Kathryn M. Bush
Kit Moore



INDEX NO.: XDEC-25

PLAN: Consolidated GenCorp Canada Inc.:
Hourly Pension Plan, C-14498 and
Salaried Pension Plan, C-6895;

DATE OF DECISION: August 31, 1994

PUBLISHED: Bulletin 5/3 (Fall 1994)

IN THE MATTER OF The Pension Benefits Act, R.S.O. 1990, c.P. 8 (the "Act");

AND IN THE MATTER OF a proposal (the "Hourly Plan Notice of Proposal") dated March 3, 1993 of the Superintendent of Pensions for Ontario to make an Order pursuant to section 69 of the PBA in respect of the Consolidated GenCorp Canada Inc. Hourly Pension Plan (the "Hourly Plan"), Ontario Registration Number C-14498;

AND IN THE MATTER OF a proposal (the "Salaried Plan Notice of Proposal") dated March 3, 1993 of the Superintendent of Pensions for Ontario to make an Order pursuant to section 69 of the PBA in respect of the Consolidated GenCorp Canada Inc. Salaried Pension Plan (the "Salaried Plan"), Ontario Registration Number C-6895;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the PBA;

BETWEEN

GenCorp Canada Inc. - Appellant

AND

Superintendent of Pensions - Respondent

AND

Local 536 of the United Rubber, Cork, Linoleum & Plastic Workers of America Acting on Behalf of Members and Former Members of the Hourly Plan - Respondent

AND

Members and Former Members of the Salaried Plan Listed in Schedule "A" - Respondent

Heard By: Eileen E. Gillese, Chair;
Monica J. Townson, Vice Chair; and
Donald G. Collins, Member.

Appearances: Brett Ledger, Ian McSweeney and Tony Devir on behalf of the Applicant;
Shaun Devlin on behalf of the Superintendent;
Barry Chercover and Margaret Correia on behalf of those persons represented by Golden, Green & Chercover.

Dates of Hearing: May 2, June 7 and 8, 1994
Toronto, Ontario

REASONS FOR DECISION

Introduction

On March 3, 1993, the Superintendent of Pensions (the "Superintendent") served two Notices of Proposal on GenCorp Canada Inc. ("GenCorp") in which he proposed to make orders under subsection 69(1) of the Pension Benefits Act, R. S. O. 1990, c. P. 8 requiring GenCorp to partially wind up the Hourly Plan and the Salaried Plan. The consequence of such orders would be that a number of members of both of the Plans would be entitled to receive enhanced benefits under section 74 of the Act. These benefits are colloquially known as "grow in" benefits.

Pursuant to subsection 89(6) of the Act, GenCorp required a hearing by the Pension Commission of Ontario (the "Commission") in which it requested that the Commission direct the Superintendent to refrain from carrying out his proposals to partially wind up the two pension plans.

The Facts

On October 30, 1987, GenCorp carried on the business of manufacturing and selling tires and tubes at Barrie, Ontario (the "Tire Business") and the business of manufacturing rubber products at Welland, Ontario. Effective October 30, 1987 (the "Closing Date"), GenCorp sold the property and assets of the Tire Business to General Tire Canada Inc. ("General Tire"). Of the GenCorp employees who were engaged in the Tire Business on October 30, 1987, approximately 802 employees became employees of General Tire (the "Transferred Employees").

General Tire established an hourly pension plan and a salaried pension plan which the Transferred Employees joined. GenCorp remained liable for benefits accrued by the Transferred Employees to the Closing Date and General Tire became liable for benefits that accrued on and after the Closing Date. The earlier service with GenCorp counted towards vesting and eligibility requirements under the General Tire plans.

On or about September 27, 1991, General Tire closed the Barrie plant, discontinued most of the Tire Business and partially wound up its pension plans. The partial wind ups of the General Tire plans resulted in some of the Transferred Employees becoming entitled to receive section 74 "grow ins".

By letter dated August 28, 1992, Lawrence Falconer, a pension officer with the Pension Commission, replied to inquiries of Kem Majid, actuary for GenCorp, about the Hourly Plan and the Salaried Plan (the "August 28th letter"). The relevant portion of his letter read as follows:

"... Regarding the acceptability of not partially winding up the plans in respect of the membership groups that were transferred to General Tire and now terminated as a result of the closure of the Barrie Tire Plant, I can advise you that Commission staff will not be issuing a notice of proposal that the Superintendent order a partial wind up of the plans. Should, however, any policy guideline of the Commission subsequently be issued that might affect this decision, then the matter would be reviewed."

After receiving the August 28th letter, GenCorp proceeded to mail termination statements on or about October 20, 1992 and process termination benefits. The Regulations in force provided that GenCorp was to have issued the termination statements 30 days after the business was discontinued, that is, almost a year earlier.

At various times after the August 28th letter was sent, the Superintendent received correspondence from union members, lawyers acting on behalf of union members and various politicians in relation to the possible partial wind up of the GenCorp plans.

By letter dated November 25, 1992, from the Superintendent to the Director of Benefits for GenCorp (the "November 25th letter"), he stated that he believed partial wind ups of the plans were necessary. Several drafts of the letter contained slightly different wording and, arguably, slightly different reasoning for his view that partial wind ups were required.

By letter dated February 22, 1993, the Superintendent wrote to Mr. Majid advising that the Pension Commission staff took the position that the partial wind ups were required and on March 3, 1993, the Notices of Proposal were issued.

ISSUES

The central issue in this hearing is: does the Superintendent have the authority under clause 69(1)(a), (d), or (e) of the Act to order a partial wind up of a pension plan in these circumstances? The circumstances referred to are that GenCorp sold its business in 1987, ceased to employ the employees associated with that business but retained responsibility for pension benefits accrued to the date of sale and the purchasing employer subsequently closed the business. Thus, the first issue to be considered is:

Issue #1. Should the Commission direct the Superintendent to order a partial wind up of the Gencorp pension plans under one or more of clauses 69(1)(a), (d) and (e) of the Act?

If the answer to Issue #1 is "yes", the Commission must proceed to determine whether the Superintendent is statutorily barred from acting.

Issue #2. Is the Superintendent barred from acting because of the five year limitation period in subsection 110(6) of the Act?

If the answer to Issue #2 is "no", the Commission must consider two more issues because of factual allegations made by the Applicant.

Issue #3. In issuing the Notices of Proposal, did the Superintendent exercise his discretion improperly?

Issue #4. Is the Superintendent estopped from issuing the Notices of Proposal?

We turn now to a consideration of these issues.

Issue #1 Should the Commission direct the Superintendent to order a partial wind up of Gencorp's Plans under one or more of clauses 69(1)(a), (d) or (e) of the Act?

Clauses 69(1)(a), (d) and (e) are set out now for ease of reference.

Section 69. -- (1) The Superintendent by order may require the wind up of a pension plan in whole or in part if,

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (d) ... a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;

Before considering the specific wording of the clauses, it is important to note three things. First, the purpose of section 69 is to ensure that employees affected by partial wind ups get the same additional benefits created by section 74 of the Act as are given to affected employees on full wind ups. As we stated in the Stelco case, the purpose of these types of provisions is to enhance the pension benefits of employees who involuntarily lose their employment as a result of plant closures, in particular long service employees. The Court of Appeal has endorsed that view, stating that "... the Act evinces a special solicitude for employees affected by plant closures." Firestone Canada Inc. v. PCO et. al. (1990), 1 O.R. (3d) 122 (C.A.).

Second, had there been no sale, on the closure of the Barrie factory, partial wind ups of the plans would have undoubtedly been ordered and Gencorp (as the sole employer) would have had to provide all of the affected employees with "grow in" benefits.

Third, GenCorp, as vendor company, chose to retain assets and liabilities associated with the Transferred Employees at the time of sale. It could have chosen to transfer them but it did not. By retaining those assets and liabilities, it retained responsibility for, and a certain relationship with, the Transferred Employees.

We have found that clause 69(1)(d) applies and will therefore consider it first.

Clause 69(1)(d): "... a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer ..."

The Applicant conceded that a significant number of members of the pension plan had ceased to be employed as a result of a discontinuance of business. What was in issue was the meaning of the word "employer". If the word "employer" was intended to mean only the employees' actual or de facto employer, then it refers to General Tire alone. If, however, "employer" means "employer or former employer", then it encompasses GenCorp as well as General Tire.

We must look to the definition section of the Act and the effect of the non-termination clause, within the context of the purpose of section 69, to discover the meaning of the word "employer".

Section 1 of the Act defines "employer" as follows.

"Employer", in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related, . . .

As can be seen, the definition of "employer" is very broad and expressly includes both predecessor and successor employer, that is, both GenCorp and General Tire.

As we said in *S. Allen et. al. v. Superintendent of Pensions*, PCO Bulletin, Vol. 3, Issue 2, Oct. 1992, p. 36 at p. 39, the word "employer" should be given a broad, purposive interpretation and in order to appreciate the meaning of the word "employer" in a particular section, the purpose of the clause must be examined. It will be recalled that the purpose of section 69 is to give employees affected by partial plan wind ups the same benefits as those

affected by full wind ups the same benefits. Thus, there is nothing in the purpose of section 69 which suggests that the word “employer” ought not to bear the meaning given to it in the definition section. On the contrary, interpreting the word in accordance with the definition section better accords with the purpose of section 69.

We must, however, consider whether according the word that meaning is appropriate in the full context of the Act. Thus, we turn to a consideration of the “deemed non termination of employment” clause. It was agreed by the parties that section 29 of the Pension Benefits Act, R.S.O. 1980, c. 373 (“the 1980 Act”) applied at the time of the sale.

Section 29 of the 1980 PBA reads as follows:

- (1) Where an employer who is bound by or is a party to a pension plan sells, assigns or otherwise disposes of all or part of his business or undertaking or all or part of the assets of his business or undertaking, and,
 - (a) in conjunction therewith, an employee of the employer becomes an employee of the person acquiring such business, undertaking or assets, in this section called the successor employer; and
 - (b) the successor employer does not assume responsibility for the accrued pension benefits of the employer’s pension plan,

the employee referred to in clause (a) continues to be entitled to the benefits provided under the terms of the plan in respect of his service in Ontario or a designated province without further accrual.

- (2) Where a transaction described in subsection (1) has taken place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued pension benefits of the employer’s pension plan, for the purposes of the employer’s plan, the employment or membership in the employer’s plan of an employee referred to in clause (1) (a) shall be deemed not to have been terminated by reason of the transaction.
- (3) Where a transaction described in subsection (1) has taken place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued pension benefits of the employer’s pension plan, for the purpose of,
 - (a) determining whether an employee is entitled to a deferred life annuity under a pension plan of the employer or successor employer; or
 - (b) determining completed service with respect to any eligibility condition of the successor employer’s pension plan,

the service of the employee shall be deemed to include his service with both the employer and the successor employer without any break in service notwithstanding the change of employers referred to in clause (1)(a).

The purpose of section 29 is to deem a non-termination of employment under the GenCorp plans to ensure continuity of membership for calculations such as service and vesting and to prevent Transferred Employees from losing their previous years of service in the calculation of future benefits under the new plans.

The effect of section 29 was to deem that the employment, by GenCorp, of the Transferred Employees was not terminated by the sale nor was membership of the Transferred Employees in the GenCorp pension plans. Thus, after the sale in 1987, General Tire became the de facto employer of the transferred employees but by operation of section 29 of the 1980 PBA, GenCorp continued to be the employer of the Transferred Employees for the purposes of the Plans.

Therefore, when the Transferred Employees' *actual employment* with General Tire was terminated, by extension, their *deemed employment* with GenCorp was also terminated. That is, the discontinuance of business by General Tire had the effect of ceasing the actual and deemed employment of the Transferred Employees. This is consistent with interpreting the word "employer" in section 69 to encompass both GenCorp and General Tire.

As we have seen, interpreting the word "employer" to include both gives effect to the purpose of section 69 of the Act which is to provide employees on partial wind up with the same benefits as on full wind up. It also recognises and is consistent with the fact that had GenCorp not sold the Barrie plant, the affected employees would have been entitled to grow in benefits. Having sold the plant and retained assets and liabilities for the Transferred Employees to the point of sale, GenCorp remained in an employment relationship with the Transferred Employees for pension purposes. When the relationship was severed by General Tire's act, the application of section 69 was triggered.

In light of our decision in respect of clause 69(1)(d), it is unnecessary to determine whether the Superintendent should be directed to order a partial wind up of GenCorp's plans under clauses (a) or (e). However, we are well aware of the fact that this is the first Commission decision on partial wind ups in such circumstances and that all segments of the pension industry are looking to it for guidance. Therefore, we offer the following comments.

The triggering event for a partial wind up under clause 69(1)(e) is "all or a significant portion of the business carried on by the employer at a specific location is discontinued". The applicability of this clause is dependent on much the same type of reasoning as that which underlay our interpretation of clause 69(1)(d), namely, does the word "employer" encompass GenCorp as vendor employer. The Transferred Employees' *actual employment* was terminated by General Tire. But termination by General Tire had the effect of ending the *deemed continuation of employment* of these employees under section 29 of the old PBA (and section 80 of the Act). Through the operation of the deemed non-termination provision, GenCorp is linked to the closure of the General Tire plant. The question becomes: once all or a significant portion of General Tire's business was discontinued, was it to be considered discontinued on the part of the vendor employer as well as the successor employer so as to give effect to the full pension rights of the affected plan members? Given our interpretation of the word "employer" in clause 69(1)(d), *supra*, it seems likely that discontinuance would be ascribed both to the successor employer and the vendor employer.

Issue #2 Is the Superintendent barred from acting because of the five year limitation period in subsection 110(6) of the Act?

Subsection 110(6) of the Act provides that:

No proceeding under this Act shall be commenced after five years after the date when the subject-matter of the proceeding occurred or is alleged to have occurred.

GenCorp argues that the five year limitation period in subsection 110(6) of the Act ("the Limitation Period") operates to bar the Superintendent from acting. It argues that the meaning of the word "proceeding" is broad and the breadth of the word is reinforced by the words that follow it, namely, "under this Act". It compares the use of the word "proceeding" in the Ontario legislation with the word "prosecution" that is used in legislation in other provinces to demonstrate that the word "proceeding" is to include a broader category of activity than a prosecution.

Thus, the argument runs, the actions of the Superintendent in issuing Notices of Proposal to partially wind up GenCorp's pension plans commenced a "proceeding". The "subject matter of the proceeding occurred", according to the Applicant, on the Closing Date, namely, October 30, 1987 and that was more than five years before the Notices of proposal were issued on March 3, 1993.

We reject both of the Applicant's contentions on this issue.

Proceeding

Does the word “proceeding” apply to matters other than action taken under sections 109 and 110 and therefore include the Superintendent’s Notices of Proposal? The predecessor to subsection 110(6) was subsection 39(4) of the 1980 Act which read as follows:

“No proceeding under this section shall be commenced more than two years after the time when the subject matter of the proceeding arose.”

Section 39 of the 1980 Act was the offences section. When the new Act was passed in 1987, section 39 was split into two sections, namely, sections 109 and 110. Arguably, the words “under this section” were changed to “under this Act” because the offences were now in more than one section. If the broader view of the wording argued for by the Applicant prevails, it would apply to bar proceedings from being taken under other sections in the Act after more than five years elapsed, including applications and hearings under sections 78, 89 and 90. This could seriously limit the scope of the Superintendent’s powers, the matters the Commission could consider and the ability of both to fulfil the purposes of the Act.

Statutes of limitation are to be construed narrowly and we believe this basic principle applies to limitation period provisions as well. Had the legislature wished to substantially expand the scope of the proceedings to be covered by the limitation period, it could have done so by placing the limitation period clause in a separate section thereby making it clear that it applied to all proceedings taken pursuant to the Act and not just those taken pursuant to sections 109 and 110.

We acknowledge that the wording of subsection 110(6) leaves something to be desired but, in the absence of the legislature’s clear intention to expand the scope of the proceedings covered by the limitation period and in light of the fact that it is contained in the offences section, we prefer the narrow interpretation and hold that the Limitation Period applies only to proceedings taken pursuant to sections 109 and 110 of the Act. Viewing the subsection in this limited sense is more consistent with the scheme, objects, intent and remedial nature of the legislation.

Subject matter of the proceeding

We accept the Applicant’s submission that a proceeding begins -- “commences” - when the first formal step in the proceeding is taken and that the first formal step was the issuance of the Notices of Proposal dated March 3, 1993. But when did the “subject matter of the proceeding” occur? At the time that General Tire discontinued the Tire Business in September of 1991 or at the time GenCorp sold the Tire Business on October 30, 1987? It was the discontinuance of the Tire Business in 1991 by General Tire that led to the termination of employment of the Transferred Employees and it was the termination of employment of a significant number of employees that triggered the issuance of the Notices. Thus, we find that it was the discontinuance of the Tire Business by General Tire in 1991 that was the event which is the “subject matter of the proceeding”.

Issue #3: In issuing the Notices of proposal, did the Superintendent exercise his discretion improperly?

The Applicant alleges that the Superintendent exercised his discretion improperly in “allowing himself to be influenced by third parties and extraneous political considerations and in failing to act in an even-handed manner toward both GenCorp and the Transferred Employees”. The evidence from which it asks that we infer such impropriety consists of the fact that the Superintendent issued the Notices despite the August 28th letter of Larry Falconer; the various drafts of the November 25th letter to GenCorp with different reasons for the issuance of the Notices; and, the correspondence and telephone calls from union representatives, counsel to the union and politicians after the August 28th letter and prior to the issuance of the Notices.

The Commission was invited, as well, to draw an adverse inference from the Superintendent’s failure to call evidence to rebut the allegation of undue influence.

We accept the following propositions put forward by the Applicant. The Superintendent must exercise his discretion fairly, impartially and in accordance with the principles of natural justice. It is the duty of the Commission to supervise the Superintendent to ensure he exercises his discretion accordingly. This supervisory function is fundamental to the establishment of confidence and trust in the regulatory regime established by the Act and it is consistent with the structure of review of the Superintendent's decisions created by section 89 of the Act.

However, as we said in one of our preliminary rulings in this hearing, it is the function of the Commission in this type of proceeding to decide whether the Superintendent should be directed to carry out or refrain from carrying out the proposed partial wind up orders. If we are satisfied that the orders ought to be issued, then we must so direct. If, in our supervisory capacity, we find the Superintendent acted improperly, then we must take appropriate steps but automatically quashing the Superintendent's Notices of Proposal, as suggested by the Applicant, is not the necessary consequence.

We do not find the Superintendent to have acted improperly. In response to the specific allegations of impropriety, we would begin by noting that there was undisputed evidence that GenCorp had input into the Superintendent's decision making process therefore it cannot be said that Superintendent did not take into account its views and considerations.

The fact that the Superintendent took a different view of the facts than that expressed in the August 28th letter does not indicate impropriety. This is the first case of this sort to be decided under the Act and no doubt there were different views held by different staff members but, the Act is clear, the decision to issue an order under section 69 is that of the Superintendent. The fact that he may have held a different view of the facts than did a staff member is no evidence of impropriety.

Nor is the fact that there are differences in the wording of the drafts of the November 25th letter. In a new and untried area, it is not surprising that the Superintendent might have had to draft a letter a number of times before being satisfied with the wording.

Correspondence from unions, counsel to unions and other interested parties can be considered advocacy of their positions, something which is different than undue influence. It is common for persons in positions such as that of the Superintendent to hear from various interested parties advocating their positions and we do not see it as signalling some kind of impropriety.

In a preliminary ruling, the Commission declined to order the Superintendent to appear and give evidence, in part because we found no defect or suggestion of a defect in process that would warrant such an order. In light of our ruling, we can scarcely draw an adverse inference from the fact that the Superintendent failed to call evidence to rebut the allegation of undue influence.

Issue 4: Is the Superintendent estopped from issuing the Notices of Proposal?

In order to determine this issue, two sub-issues must be considered. These are:

1. Does estoppel lie against the Superintendent?
 2. If so, have the three elements needed for estoppel to lie been proven? These elements are: (a) communication of a clear promise or representation (b) reliance on that representation (c) to one's detriment.
1. **Does estoppel lie against the Superintendent?**

In the circumstances, we find that estoppel cannot lie as, if it does, it would defeat the operation of the Act. In other words, we do not accept that estoppel can be raised in this situation, as the act which the Superintendent is allegedly estopped from performing is the exercise of a statutory discretion pursuant to subsection 69(1). See *Maritime Electric v. General Dairies* [1937] A.C. 610 (P.C. on appeal from S.C.C.) at p. 620 and *Attorney General of Canada v. General Truck Drivers and Helpers Union*, [1973] 5 W. W. R. 235 (B.C. S.C.).

There is some suggestion in the jurisprudence that the law of estoppel in this area is changing. If the basic proposition set out above needs refinement, we would add this. Where there is a countervailing benefit to the public, estoppel cannot lie against the public body, even where some injustice may result to a private individual. (In Southend-on-Sea Corp. v. Hodgson (Wichford) Ltd., [1961] All E. R. 46 (Q.B.); Re Bella Vita Restaurant (1982), 41 B. C. L. R. 283 (C.A.)). The amount claimed by GenCorp to have been expended in reliance on the August 28th letter is approximately \$28,000 to \$32,000 whereas the amount of benefits in question for the Transferred Employees is something in excess of five million dollars. The countervailing benefit to the public and injustice to the Transferred Employees far outweighs the alleged injustice to GenCorp.

2. Have the elements needed to establish estoppel been proven?

The essence of the Applicant's estoppel argument is that, through the August 28th letter, the Superintendent advised GenCorp that he would not issue Notices of Proposal and therefore he was estopped from later doing so. Given the critical nature of the August 28th letter, the salient portions are set out again.

"Regarding the acceptability of not partially winding up the plans in respect of the membership groups that were transferred to General Tire and now terminated as a result of the closure of the Barrie Tire Plant, I can advise you that Commission staff will not be issuing a notice of proposal that the Superintendent order a partial wind up of the plans. Should, however, any policy guideline of the Commission subsequently be issued that might affect this decision, then the matter would be reviewed." (emphasis added)

Communication of a Promise/Representation

There is some ambiguity to the meaning of the underlined words. We think that the most reasonable meaning to be ascribed to the passage is that the PCO staff would not recommend to the Superintendent that he issue Notices of Proposal to order partial wind ups. If that interpretation is correct, there was no representation as there was only the recommendation that the Superintendent not issue such orders.

However, we do not need to decide this matter solely on whose interpretation of the letter is correct. The August 28th letter specified that the decision could be reconsidered if policy guidelines were issued. Thus, there was no clear (i.e. unambiguous) representation that partial wind ups would not be ordered.

Moreover, even if there were a representation, it was made by a person who did not possess the power to make the decision or bind the Superintendent. The decision to issue a Notice of Proposal to partially wind up a pension plan is solely that of the Superintendent courtesy of subsection 69 (1). It is not clear to the Commission that a person can be seen to have made a promise or representation if he/she is not empowered to do so and we do not accept that the August 28th letter can be seen as a message from the Superintendent. (R. v. Laister, [1969] 1 O. R. 580 (H.C.J.)). As a result, as the Superintendent never made any promise or representation that he would not issue partial wind up orders, we do not believe that an estoppel claim can be made out. The fact that no policy guidelines were ever issued is irrelevant.

Reliance

In view of our findings on the first sub issues, the balance of our findings can be brief.

Reliance must be reasonable in the circumstances, to be measured by an objective standard. It is common knowledge in the pension community that Commission staff cannot give rulings that would bind the Superintendent where the authority for such rulings lies solely with the Superintendent. Mr. Majid (and therefore GenCorp) knew, or ought reasonably to have known this and they should have sought a decision directly from the Superintendent in order for it to be binding. Thus, if there was reliance, it was unreasonable in the circumstances.

Detriment

GenCorp incurred expenses relating to issuance of termination statements and processing of termination benefits after the August 28, 1992 letter, however, the costs were paid from the pension funds. There was no evidence that GenCorp has been or will be called upon to fund up the amount expended as there is a surplus in the fund.

GenCorp allegedly suffered a loss of goodwill because of the delay in the Superintendent reversing his decision but the evidence led on this point did not establish the same. If anything, the letter in evidence was equally consistent with the view that any loss of goodwill was due to the delay in processing termination statements by GenCorp. By regulation, those statements were to have been sent by GenCorp within 30 days of termination and it is readily understandable that plan members entitled to such statements would have been frustrated when the statements were not issued for about a year.

A final comment on this issue. Estoppel is an equitable doctrine and the "equities", as a result, are to be considered. It would not be equitable if the former members of the plans were denied growth in benefits on the basis of a communication which they did not make.

Conclusion

The Commission hereby orders the Superintendent to carry out the Notices of Proposal and order partial wind ups of the Hourly Plan and the Salaried Plan.

Dated this 31st day of August, 1994 at Toronto, Ontario.

Eileen E. Gillese, Chair
Monica J. Townson, Vice Chair
Donald G. Collins

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Phone: (416) 325-8369 or fax: (416) 325-8252.

Contacts for Plan-related Enquiries

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Trade, Commercial, Public Administration	Mark Eagles	314-0599	Rosemine Jiwa-Jutha	314-0611
Food, Beverages, Textiles, Paper	Jaan Pringi	314-0586	Larry Martello	314-0587
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Elizabeth Addo	314-0607
Printing, Primary Metals, Machinery	Larry Murray	314-0644	David Kearney	314-0590
Electrical, Non-Metallic, Chemicals	David Kearney	314-0590	Larry Murray	314-0644

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

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BRO-COM	Steve Young (bilingual)	314-0646	Mark Henry	314-0584
CON-EZZ	Alain Malaket (bilingual)	314-0609	John Graham	314-0647
F-HAZ	Mark Henry	314-0584	Steve Young	314-0646
HEA-KMZ	William Qualtrough	314-0641	Sandy Malloy	314-0636
KNA-MOQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR-PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL-SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI-TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR -#*	John Graham	314-0647	Alain Malaket	314-0609

*Companies with alpha-numeric names.

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COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM-FLO	Amin Purshottam	314-0552	Marion Gassenauer	314-0690
FLU-HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM-JAL	Merle Corbie	314-0637	Lynn Barron	314-0639
JAM-MIL	Debra Bain	314-0640	John Staric	314-0596
MIN-ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU-RAL	Lynn Barron	314-0639	Merle Corbie	314-0637
RAM-SHA	John Staric	314-0596	Debra Bain	314-0640
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THE-VUL	Lynn Barron	314-0639	Merle Corbie	314-0637
VUM -#*	John Staric	314-0596	Debra Bain	314-0640
As Designated	Placido Mineque	314-0670		

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4. Alpha Allocations - Pension Plans of Insolvent Companies

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